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The San Francisco Task Force on Prostitution

Final Report

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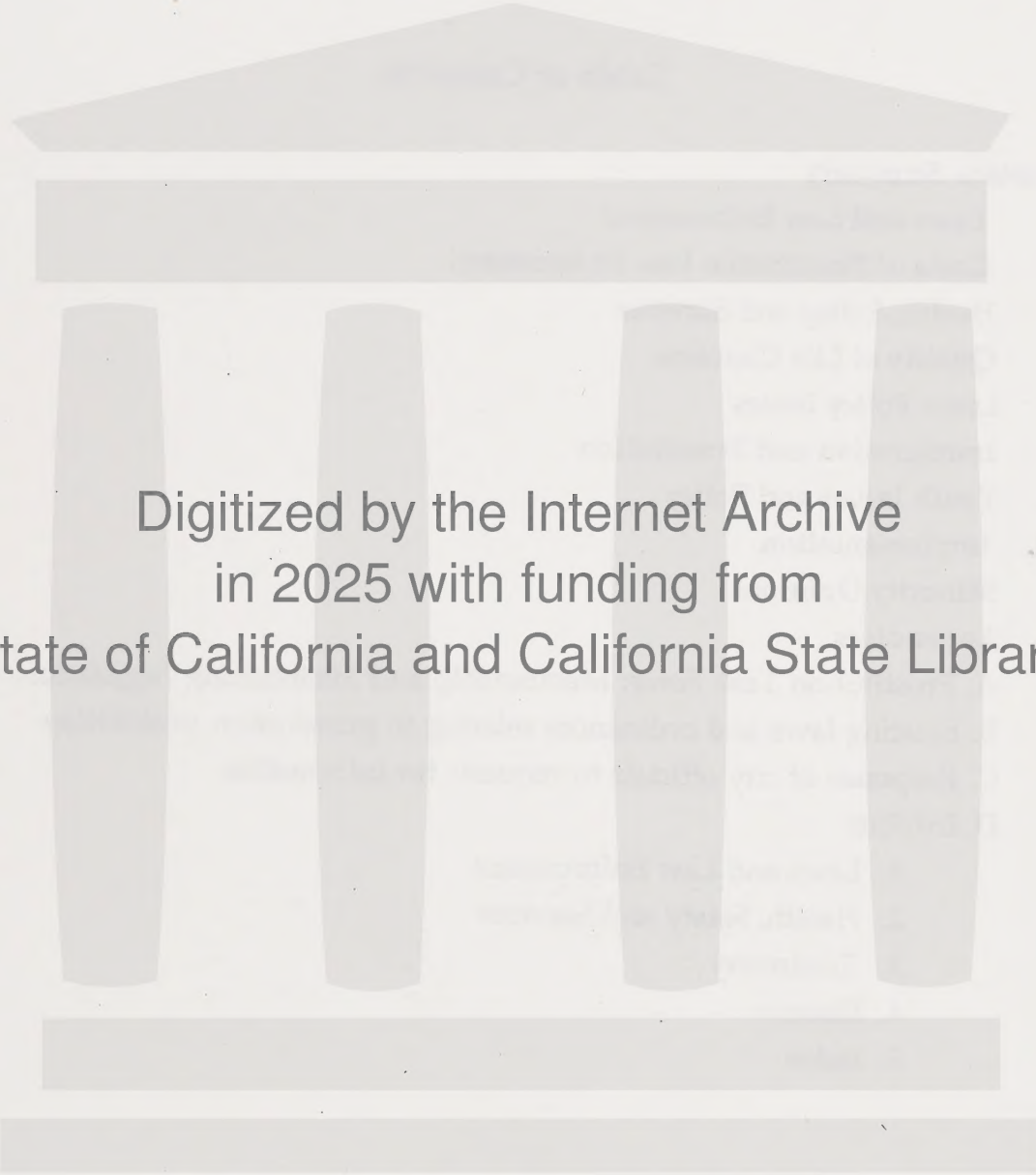
UNIVERSITY OF CALIFORNIA

**Submitted to the Board of Supervisors
of the
City and County of San Francisco, California
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Executive Summary

Prostitution has always existed in San Francisco, as it has in every city, small or large. Indeed, prostitution is part of San Francisco's romanticized past: Prostitutes as well as sailors and pirates and gold speculators made up the Barbary Coast, a part of San Francisco history which we prize today. Local lore has it that many of the small streets and alleys South of Market were actually named for some of the City's most famous prostitutes.

Perceptions of modern prostitution, however, far from glamorizing it, bemoan it as one of the chronic problems of the inner city. Just as the Barbary Coast is part myth, part exaggeration and part fact, modern perception of prostitution combines myth, exaggeration and fact. In order to separate fact from fallacy, the San Francisco Board of Supervisors chartered the San Francisco Task Force on Prostitution in March of 1994, through a resolution introduced by Supervisor Terence Hallinan.

The Task Force was charged with investigating prostitution patterns and practices in the City, as well as current social and legal responses. It was further requested to recommend social and legal reforms which would best respond to the City's needs while using City resources more efficiently.

The Task Force met for a year and a half. It maintained four standing committees: Health, Safety and Services; Legal and Fiscal Impact; Neighborhood Issues; and Research. The committees and the Task Force as a whole received documents, heard testimony and sought input from every concerned constituency in the City: Business leaders, neighborhood activists, prostitute advocates, current and former prostitutes, clients, police, prosecutors and defense attorneys, health professionals, international scholars and at-large representatives. As expected with such a complex and potentially volatile issue, the Task Force could not reach consensus on every

issue. Its recommendations represent the best efforts of all concerned to balance competing concerns.

The Task Force concluded that prostitution is not a monolithic institution. Although the majority of sex workers are women, it encompasses people of all genders working in the pornographic media industry, live theater, massage parlors, bordellos and through print advertising, as well as the street workers most commonly envisioned when the word "prostitution" is mentioned. Because it is such a varied industry, the City's responses must vary as well.

The Task Force discovered that the complaints leveled against prostitution really apply only to a fraction of the total industry and that those legitimate concerns are not being met by efficient and effective solutions. Yet not only are current responses ineffective, they are also harmful. They marginalize and victimize prostitutes, making it more difficult for those who want out to get out of the industry and more difficult for those who remain in prostitution to claim their civil and human rights.

The Task Force hopes that these recommendations will be met with the same spirit of thoughtful inquiry that went into framing them. The members also hope that the City will continue the dialogue which the Task Force has begun. An issue as complex as this one cannot hope to be resolved in the short time we have had.

Summary of Recommendations

In San Francisco, the current institutional perspective on prostitution can be summed up in one word: prosecution. Most health and social services are secondary to, or intertwined with, the enforcement and prosecution of soliciting crimes. Moreover, this approach is directed almost entirely at street prostitution, which is estimated to comprise only 10-20% of prostitution in

the City.¹ Although the arrest and prosecution of soliciting crimes has increased dramatically over the last few years,² the incidence of street prostitution shows no signs of subsiding, and neighborhood activists and business groups have become more and more vocal about the problems they perceive that street prostitution causes.³

It is no coincidence that the rise in enforcement and prosecution of soliciting crimes comes at the same time that the City budget for social services has been cut more drastically than at any time in the City's history.⁴ Unfortunately the rise in enforcement also seems to coincide with rising complaints against police officers of brutality and deprivation of civil rights.⁵ Moreover, the City Attorney has concluded that many of the anti-prostitution laws on the City's books are unconstitutional.

The Task Force concludes that the current prosecutorial response does a great deal of harm but little good. It has not solved the quality of life concerns voiced by neighborhood residents; it has cost the City millions of dollars; it deprives residents of positive services which would ameliorate the

¹ Delacoste, Frederique and Priscilla Alexander 1987
Sex Work. Pittsburgh: Cleis Press. page 189

² See Appendix D. San Francisco Police Department Arrest Reports, January to December 1994. On file with the Police Department. Adults and Juveniles Arrested by Race and Sex: Prostitution-Related Arrests in comparison with other Part II crimes.

³ Weitzer, Ronald. Spring 1995. "New Conflicts Over The Oldest Profession"
Gray Areas, page 52

⁴ Governor Wilson's proposed budget for fiscal year 1996-97 eliminates Medi-Cal for drug related disabilities and drastically reduces grants to families on Aids to Families with Dependent Children (AFDC). The effects of both these budget cuts will severely impact local governments across the state; in San Francisco cuts will impose new burdens on social services that are already competing for resources.

Also,
"Federal Budget Impact On San Francisco." September 20, 1995.
Controller's Office. Presented to Board of Supervisors, Budget Committee

⁵ "Police Misconduct Report" On file with the San Francisco Board of Supervisors, submitted for the 'Hearing on Office of Citizen Complaints Reform', 1995. See Appendix D.: Law and Law Enforcement: Testimony.

Also,
Yvonne Dotson Vs. Yee, September 1995 prepared by Fania Davis, attorney for Yvonne Dotson, in accordance with settlement against San Francisco in which Federal Court Judge Marilyn Patel of the Ninth Circuit Court directed Dotson to submit recommendations for the Police Department that address police misconduct.

problems. Moreover, City residents overwhelmingly oppose enforcement and prosecution of prostitution crimes.⁶

The Task Force therefore recommends that the City departments stop enforcing and prosecuting prostitution crimes. It further recommends that the departments instead focus on the quality of life infractions about which neighborhoods complain and redirect funds from prosecution, public defense, court time, legal system overhead and incarceration towards services and alternatives for needy constituencies.⁷

These recommendations are expanded upon in the report along with recommendations about Health Services, Youth, Immigration; Labor Policy and Issues; and Implementation of Recommendations. Finally, the Task Force recommends that the City maintain a working group on prostitution to oversee implementation and use the City's dispute resolution resources to engender greater communication among neighborhood and business concerns and prostitute representatives.

⁶ On December 7, 1993, the San Francisco Examiner reported that, in a telephone poll based on over 10,000 calls from Examiner readers, 85% supported legalization of prostitution.

⁷ The Task Force considered other options for controlling prostitution, such as zoning and state-sponsored brothels. These options are not feasible for the city at present because the City cannot create laws which conflict with laws on prostitution. For this and other reasons, the other options do not meet the city's needs. For discussions of regulatory options, see Appendix D.: Law and Law Enforcement: Decriminalization and Regulation.
Also,
Section IX. Minority Opinions

I. Laws and Law Enforcement

Most laws against prostitution activities are written by the State Legislature. These are the misdemeanors and felonies most used against alleged prostitutes. The penalties include sentences of up to six months in jail for misdemeanors and state prison terms of 16 months to eight years for felonies. Because these laws were written in Sacramento, San Francisco does not have the power unilaterally to change them. Because of these same laws, the City may not unilaterally legalize or decriminalize prostitution.

The San Francisco Municipal Police Code also contains some ordinances against prostitution. Many of these duplicate state laws. Others are patently vague and archaically written. The City Attorney has concluded that most of the San Francisco ordinances are unconstitutional and should be repealed.⁸ Nevertheless, these ordinances occasionally are used to arrest suspected prostitutes, though they are usually discharged before they ever make it to court.⁹ The reality is that enforcement and prosecution of these laws merely creates a revolving door in the criminal justice system.

The San Francisco Police Department does not consistently enforce laws against any sex workers except the most visible, those working on the street, and those most vulnerable, including African American, transgender, and immigrant women.¹⁰ Most people arrested spend no more than a weekend in jail before being released. Though enforcement may increase,

⁸ See Appendix C. The City Attorney was asked for an opinion on Municipal Code Sections 215 - 248. The City Attorney determined that these codes are unconstitutional. Based on this information, the Task Force recommends that they be repealed by the Board of Supervisors.

⁹ See Appendix D.: Law and Law Enforcement: City and County of San Francisco Court Management Report, #4344. and Constitutionality of police sweeps and problems faced by persons arrested for Municipal Police Code violations.

¹⁰ See Appendix D. Law and Law Enforcement: San Francisco Police Department Arrest Reports, January to December 1994. On file with the Police Department. Adults and Juveniles Arrested by Race and Sex; Prostitution-Related Arrests in comparison with other Part II crimes.

Also, Special Investigations Bureau, Vice Crimes Division, Monthly Report, December 1994.

Also, "Police Abuse of Prostitutes and Office of Citizen Complaints Reform," Documents submitted at OCC reform hearings. See Appendix D.: Laws and Law Enforcement.

there is no evidence that it does any more than force street workers to move from one place to the next.¹¹ The Task Force concluded that prosecution of prostitution has exacerbated problems in the industry including violence and chemical dependency, while enforcement further marginalizes prostitutes.

The Task Force heard evidence that prostitutes are afraid to call the police when they are crime victims, for fear of being arrested themselves. Once a person gets a rap sheet as a known prostitute, she/he may be trapped and stigmatized for life, and may be unable to pursue other jobs.

As noted in the Quality of Life section, enforcement of these laws does not solve neighborhood concerns. The Task Force findings indicate that decriminalization of prostitution could eventually reduce street prostitution and would enable the city to address the problems of the vulnerable populations who are currently part of the street economy.¹²

Adequate state and local laws already exist to respond when noise, trespassing and littering are problems. These infractions are punishable by fines, not by incarceration. Since they cannot be jailed upon conviction, people charged with these infractions do not have the right to a jury trial or an attorney. Since they are handled in traffic court, prosecution, defense and Sheriff's resources are not needed. Failure to pay fines is a criminal offense, however; those who refuse to pay their fines may be prosecuted. Infractions are therefore a more cost-effective enforcement option than misdemeanors and felonies.

Under no circumstance, however, should these infractions be used to harass suspected prostitutes. Harassment and abuse of suspected prostitutes is a serious problem in the San Francisco Police Department which is only

¹¹ Kerr, Courtney. March 1994. "Geographical Study of Prostitution in San Francisco"
Journal of Urban Studies pages 30 - 35

¹² Ibid.

recently coming to light.¹³ The very methods of enforcement encourage abuse: police officers pose as prospective clients and try to get suspects to say the words that will get them arrested. The police are most successful who most convincingly behave like clients. Many women complain of vice officers fondling them or exposing themselves before arresting them. These women refuse to report abusive officers because they fear retaliation or that they will not be believed.

Despite the difficulty of uncovering and uprooting abuse, in 1994 a police officer was arrested for forcing a massage parlor worker to orally copulate him;¹⁴ and the City paid \$85,000 in damages to a registered nurse who was falsely arrested and held when the officers suspected her of being a prostitute. In the course of that litigation, Federal District Court Judge Marilyn Hall Patel recommended that the U.S. attorney's Office investigate the arresting officers for perjury during their testimony.¹⁵

Law enforcement policy also affects public health policy. This issue is discussed in the Health, Safety and Services section but one particular law should be highlighted here. State law requires that anyone convicted of soliciting prostitution be tested for HIV infection. The results are kept on file in Sacramento; if a person is rearrested for soliciting, any District Attorney may learn their results. If the person was HIV positive at the time of the previous conviction, the new charge is elevated to a felony. The person charged faces state prison for offering or agreeing to perform a sex act for money. The law does not distinguish between offers of safe sex and offers of

¹³ Arrest statistics clearly indicate discrimination in prostitution arrests based on gender, since only a small percentage of those arrested are male, although the large majority of participants in prostitution are male. Police also discriminate against street prostitutes although they represent the smallest sector of prostitutes. Based on Task Force testimony, African American, Transgender and immigrant women are specifically targeted in cases of harassment and other abuse.

¹⁴ Opatry, Dennis J. March 24, 1994. "Police Officer Charged with Kidnapping with Intent to Rape" and "San Francisco Cops Expand Probe in Sex Case"
San Francisco Examiner

¹⁵ Yvonne Dotson Vs. Yee, September 1995 prepared by Fania Davis, attorney for Yvonne Dotson, in accordance with settlement against San Francisco in which Federal Court Judge Marilyn Patel of the Ninth Circuit Court directed Dotson to submit recommendations for the Police Department that address police misconduct.

unsafe sex.¹⁶ Civil libertarians and AIDS activists point out that this law stigmatizes a group of people for their immunodeficiency status, without any evidence that they are actually causing harm.¹⁷

Moreover, the forced testing law assumes that prostitutes represent a threat to public health. There is no evidence that sex workers as a group have greater incidence of HIV infection than the general population or that they spread HIV disease. In fact, evidence shows that San Francisco sex workers are highly educated about safe sex.¹⁸

Completely contrary to the policy of improving public health, the San Francisco Police Department had a policy of confiscating condoms from people arrested for prostitution-related offenses. Many of the condoms taken had been given to street workers by the City Department of Health. Further, if a person charged with soliciting prostitution had condoms when arrested, the District Attorney's office used the condoms as evidence against them in court. The Task Force unanimously passed a resolution condemning the Police and the District Attorney's actions. (See Appendix D.: Laws and Enforcement) Under pressure, the District Attorney promised to stop using condoms as evidence. Nevertheless, some police officers are still acting in contradiction to the policy. At this time, Senator Milton Marks is sponsoring legislation which would prohibit District Attorneys from using condoms as evidence of prostitution-related activities.¹⁹

¹⁶ See Appendix B. Existing Laws: Penal Code section 1202.6

¹⁷ O'Leary, Ann and Loretta Sweet Jemmott editors. 1995.
Women and AIDS: The Emerging Epidemic. New York: Plenum Publishing Corp.

See chapter by: Cohen, Judith Black and Priscilla Alexander. "Female Sex Workers: Scapegoats in the AIDS Epidemic".
Also, Alexander, Priscilla. No. 3. 1993. "HIV/AIDS Surveillance Report"
World Health Organization pages 7 and 11

¹⁸ Ibid.

¹⁹ Celia McGuinness, San Francisco Office of the Public Defender, personal communication.

The following recommendations address immediate shifts in priorities within the current legal framework as well long term goals.

I. Repeal the unconstitutional Municipal Police Codes— sections 215 through 248— in accord with recommendations by the City Attorney.²⁰

II. Immediately stop enforcing and prosecuting misdemeanor and felony laws. Dismiss all current prosecutions in order to begin immediately reallocating resources.

III. Respond directly to complaints of excessive noise, littering and trespassing by enforcing ordinances specific to those complaints.²¹ The police should not use any laws to harass suspected prostitutes.²² (See Appendix B. For State Laws and Municipal Codes.)

IV. Vigorously enforce laws against coercion, blackmail, kidnapping, restraining individual's freedom of movement, fraud, rape and violence regardless of the victim's status as a sex worker.²³

²⁰ See Appendix C.: Response by City Officials. The City Attorney was asked for an opinion on Municipal Code Sections 215 - 248. The City Attorney determined that these codes are unconstitutional.

²¹ In this way police can target the unwanted activity without harassing a specific class of people. The logic behind this dual strategy is to adopt the most cost effective way of addressing problems in the streets while supporting alternatives that will reduce reliance upon prostitution to earn a living. This will mean an immediate decrease in criminal proceedings and will allow the re-direction of resources to programs that are enumerated in the Health, Safety and Services Section of the Report.

²² See Appendix D.: Law and Law Enforcement. Municipal Codes relating to public disturbances should not be used to target any population including homeless people or prostitutes. When fines are disproportionate or excessive, prostitutes may work additional hours to pay the fines. Such a structure can defeat the potential for efficient allocation of city resources away from expensive criminal prosecutions, thwart a policy of reducing street solicitation and can result in a breach of civil rights. According to reports submitted by Task Force representative Rachel West (US PROS), "The current prostitution laws are enforced disproportionately against sectors discriminated against as a result of their race, sexual orientation, national origin, and/or economic background. Illegal arrests and harassment are common."

Also,
Section IX. Minority Opinions

²³ See Appendix B.: Existing Laws. Laws that are intended to punish pimps and traffickers (266 h & i) are often used against prostitutes working together to protect themselves (see Appendix D.: Law and Law Enforcement: Testimony) and against women such as Heidi Fleiss, a well-publicized example. Although the current laws that were intended to deal with coercion and other abuse of prostitutes are not effective against the abusers, existing laws against violence and abuse could readily be used to prosecute abusive pimps. Enforcement of laws against violence and other abuse should supplant current laws prohibiting pimping, (living off the earnings of prostitution) and pandering (encouraging prostitution). Also, the Health, Safety and Services, and Implementation sections which recommend supportive and confidential means through which violence against sex workers can be effectively abated.

Also,
Keough, Caroline. "Prostitutes Raped with Impunity," 1995.

V. Redirect resources currently allocated to police investigation, incarceration, prosecution and defense of sex workers to augment resources for housing, outreach and other services for these populations. (See Health, Safety and Services Recommendations.)

VI. Curtail expenditures for Police investigation of prostitution venues where there are no accompanying complaints, including hotels, cafes and bars.²⁴

VII. Remove authority for the licensing of massage parlors, masseuses and masseurs and escort services from the Vice Crime Division's jurisdiction and place it with agencies already qualified to grant other standard business licenses.²⁵

VIII. Provide training and circulate directives to Police Department and Sheriff's Department personnel to eliminate harassment and abuse of prostitutes by law enforcement personnel.

IX. Provide training to improve the ability of the District Attorney's office to successfully prosecute cases of rape and other assault in which prostitutes and other sex workers are the victims.

²⁴ San Francisco Municipal Code 241, prohibits persons of "lewd or immoral character from loitering in places of business."

²⁵ See Appendix D: Law and Law Enforcement: Massage Licenses. Currently, the Police Department licenses massage and escort businesses. According to a memo by Police Chief Ribera in response to an inquiry as to why licensing can not be transferred to another City agency, "The high propensity for vice related activities, i.e., prostitution, pimping and pandering requires the Department to monitor the activities of suspect masseuses and masseurs and massage establishment operators. While violations of law detected by the Police Department may be criminally prosecuted, the advantage of being the permitting authority grants the Department the ability to administratively review and discipline offenders." The Task Force Legal Committee reviewed this policy and found that this dual jurisdiction represents a conflict of interest and promotes corruption in the police department. Police are never responsible for "disciplining" violators of the law, the Courts are. Moreover Ribera's argument is specious in light of the over \$127,000 a year accrued in licensing fees.

X. Authorize city lobbyists to identify legislators who will commit to carrying legislation towards the following goals.: (See Appendix B. For State Laws and Municipal Codes.)

o Repeal state laws that criminalize engaging in, agreeing to or soliciting prostitution, or laws and policies which can be interpreted to deny freedom of travel, and the right to privacy to prostitutes.

o Repeal state laws which can be interpreted to deny freedom of association, or which criminalize prostitutes who work together for safety.²⁶

o Repeal mandatory HIV testing and felony enhancements of HIV+ prostitutes.

o Repeal minimum mandatory sentencing laws for second and subsequent convictions.²⁷

Currently, and as long as there are people accused and convicted of prostitution-related offenses in our jails, the Task Force recommends the following:

XI. Conduct a study of the accessibility and relevance of services in the city and county jails, and the juvenile detention center, to individuals involved in the sex industry.

²⁶ There was testimony from prostitutes in San Francisco (and from prostitutes' organizations in other countries) that laws against the 'living off the earnings of prostitution' are often used against families of prostitutes, and against prostitutes working together in various business arrangements. These laws inhibit organization for self-protection and criminalize consensual personal relationships, and numerous other aspects of prostitutes' lives. See Legal Recommendation IV.

Also,
See Appendix D: Law and Law Enforcement: Testimony.

²⁷ Senator Milton Marks is presently sponsoring legislation to repeal the minimum mandatory sentencing laws related to conviction for 647(b).

XII. Develop peer based pre-release planning programs relevant to prostitutes to connect them to social service programs that respond to their specific needs, including sex worker's rights organizations, as well as other programs that help them obtain housing, jobs, clothes, child custody and child care, health care and other post-release needs they have.

XIII. Formulate a pro-active policy within the Sheriff's department, that persons brought in on charges related to prostitution should not be excluded from citation release programs.²⁸

²⁸ According to staff persons at the Center for Juvenile and Criminal Justice, police would issue orders not to release people who had been arrested on prostitution related charges. One staff person recalled that at one point all the women incarcerated on one day were documented as prostitution-related arrests.

II. Costs of Prostitution Law Enforcement in San Francisco 1994

Defining the monetary cost of enforcing prostitution laws in San Francisco is difficult. None of the city departments and agencies with responsibility for dealing with prostitution have been able to segregate their prostitution enforcement costs from their overall budgets. Because the departments previously have seen no need to assign time, material, and overhead costs to such a specific program function, the city is left in the posture of not knowing how much prostitution enforcement costs or whether it is an effective application of resources.

The Task Force has made the best estimate possible, based on the Departments' own projections. (See Appendix D.: Law and Law Enforcement). None of the agencies were able to provide a definitive measurement of the amount of time and money spent to combat prostitution, or otherwise deal with its consequences. We have made informed approximations when necessary. We believe the actual costs may be even higher than the numbers cited here.

Police Costs

The Police Department acts as a gatekeeper for enforcing prostitution laws; its decisions on deployment of its resources subsequently obligate all other branches of the system to expend their resources as well. Currently, the Vice Crimes Division has primary responsibility for prostitution enforcement, augmented by patrol resources and special units such as the Tenderloin Task Force.

The Vice Department comprises 12 police officers who devote the majority of their time and resources to prostitution abatement and the remainder to gambling. It also investigates any felonies committed by

prostitutes. In 1994, there were 17 felony prostitution arrests made by the Vice Crimes Division.²⁹

Vice Crimes Division personnel costs	\$815,452.00 ³⁰
Vice Crimes Division vehicle costs	\$ 8,000.00

While the Department could not report specifically how much it expends on prostitution abatement, there may be additional Vice Crimes Division costs not included in these two figures. General overhead expenses such as materials, light, heat, telephones, furniture and the like are aggregated in a different part of the police budget.

Regular patrol officers at district stations supplement the Vice Division efforts. The Police Department did not provide any estimate of how much time and resources the uniformed patrol function applies to prostitution abatement. It should be noted that the patrol portion of the abatement effort often does not result in an arrest, but nevertheless consumes time, as patrol officers stop to conduct field interrogations of suspected loiterers or respond to complaints about prostitution activity.

In a more regularized fashion, the Tenderloin Task Force has been conducting periodic "sweeps" of suspected prostitutes and drug sellers in the downtown core. The Chief of Police did not provide any accounting of the costs associated with these sweeps, in which uniformed officers patrol the downtown core in search of suspected prostitutes, arresting them under Penal Code section 372 which prohibits "public nuisance." In past years these sweeps have occurred as often as several times a week, resulting numerous arrests each night.³¹ Presently there are about 60 officers assigned to the

²⁹ Special Investigations Bureau, Vice Crimes Division Monthly Report December 1994.

³⁰ See Appendix C.: Response of city officials to requests for information. Letter to Supervisors from Police Chief Anthony D. Ribera, November 17, 1994. The Department made 5,269 prostitution related arrests in 1994.

³¹ Alison Riker, Center For Juvenile and Criminal Justice, personal communication.

Tenderloin Task Force, along with their equipment and overhead. Based on an average salary/benefit cost of \$54,500 per officer, this Task Force costs approximately \$3.2 million annually.³² The Tenderloin Task Force spends a significant portion their time and resources on prostitution abatement, so that estimated costs of related activities of this special unit amount to approximately \$1.3 million.

One other potentially significant expense is not included in our estimates. Arresting officers are paid overtime while awaiting court proceedings if they would otherwise not be on duty. Since most Vice officers work nights, the overtime costs may be significant. In addition, officers assigned to other departments work in Vice during their 'overtime' hours.³³

Initial Incarceration Costs

Once a prostitute has been arrested, the City incurs new expenses on incarceration, pending an initial court appearance. Many are held in custody and some may spend the weekend in jail before being released, usually because of past failures to appear.³⁴

The remainder spend between three and six hours in jail before being released. Each arrest requires booking, fingerprinting, computer checks and other processing before eligibility for release, all of which represent the more labor-intensive and therefore the most expensive aspect of the incarceration process.

³² Additional expenses include salaries for officers from district stations who provide back up for Vice Crimes activities in neighborhoods by performing field bookings or holding arrestees at the local stations and then transporting them to 850 Bryant Street. Periodic sweeps are also conducted in these neighborhoods, in which persons suspected of prostitution are arrested or cited on a number of public nuisance charges.

³³ These figures were not included in the budget provided by the Vice Crimes Division for this study. See Appendix C: Response of city officials to requests for information.

³⁴ Alison Riker, Center For Juvenile and Criminal Justice, personal communication.

Some persons arrested for prostitution crimes are not booked, but cited to appear at a later date. Those cited are not immediately booked, but must be fingerprinted and processed on their first court date. Those expenses are not included in our estimates.

Each day in jail costs approximately \$60 per inmate.³⁵ Short term incarceration costs and an educated projection of the above costs associated with booking, fingerprinting and processing on the first court date amount to approximately \$312,000.

Court Costs

Once an arrested person has been processed through the jail and released on either bail or a promise to appear, prostitution enforcement activity turns to the municipal court system. Of the 5,269 prostitution-related arrests in 1994, only 2,400 of these cases were taken to court.³⁶ In over half the cases the District Attorney chose not to press charges, most likely based on lack of evidence as well as budget considerations. "The courts are busy and the D.A.s don't have time," said one Municipal Court administrator, anonymously, when asked to explain this discrepancy. "The police are probably just harassing the people and hoping that they go someplace else..."

Those 2,400 cases that do go to court represent somewhat more than one-fourth of the Municipal Court's total case throughput of 8,000 cases a year. The city spends about \$8 million annually for operation of Municipal Courts.

The average prostitution court case requires five appearances: Arraignment; two or three pretrial conferences or disposition, dates; and a

³⁵ Riker, Alison and McIntye. December 1993. "Beyond Shelter to Behind Bars"
Center for Juvenile and Criminal Justice Report.

³⁶ Jeff Brown, San Francisco Public Defender.

sentencing hearing upon conviction. Factors such as the complexity of the case, whether Pretrial Diversion is available, and other variables make it difficult to calculate precisely how much is spent on prostitution enforcement in the court system. It is estimated that such costs, including judicial salaries, clerks, bailiffs, courtroom overhead, etc., is approximately \$2.5 million annually.³⁷

Attorney Costs

The vast majority of those arrested and brought to court on prostitution-related charges are prosecuted and defended at public expense.

The cost for the District Attorney's office to prosecute these cases has been estimated at \$750,000 annually.³⁸

The Public Defender's Office represents approximately 60 percent of those charged with prostitution. The cost to defend these cases is estimated at \$500,000 annually.³⁹

Long term Incarceration Costs

There are an average of 45 people in jail after conviction for prostitution at any given time.⁴⁰ Calculation of the cost of long-term incarceration would require an analysis of variables such as the average length of sentence, multiplied by the daily cost per inmate of long-term incarceration. Most of those sentenced to jail terms serve 30 days to 90 days.

³⁷ See Appendix C.: Response of city officials to requests for information. Letter to Supervisors from Diane Elan Wick, Presiding Municipal Court Judge. Cost figures for the Municipal Court system are based in part on figures and estimates provided to the Task Force by Municipal Court Clerks and lawyers practicing in the court.

³⁸ Although the D.A. did not provide current information, the estimate is based on similar expenses within the Public Defender's Office. Adjustments were made to account for the fact that while the D.A.'s office handles all prostitution cases, not all cases are similarly defended by the Public Defender, but rather some are handled by private counsel. In addition, the D.A.'s office employees are paid higher salaries than P.D.'s.

³⁹ Jeff Brown, San Francisco Public Defender.

⁴⁰ In an interview in April 1994 with a representative from the Task Force, Raleigh Greenberg of Forensic AIDS Services, a division of the Sheriff's Department in conjunction with the Health Department, stated that 2% of the overall prison population are incarcerated on prostitution charges. The male and transgender prostitutes in jail are included in this 2% figure.

Based on the reported \$60 per day incarceration cost and the average daily number of prisoners serving prostitution-related sentences, it would appear that long term incarceration costs approximate \$985,500 annually.

Additional Corrections Costs

In addition to short-term and long-term incarceration costs, the city expends funds administering probation, county parole, pre-trial diversion, and supervised recognizance programs for those arrested and/or convicted of prostitution that together cost approximately \$100,000 annually.

Additional expenses not included in these figures are state incarceration, probation and parole expenses for persons who have been charged with prostitution-related parole violations in connection with former felony offenses.⁴¹

Forensic Health Programs

Under state law, those convicted of soliciting for prostitution are required to undergo mandatory HIV testing. This program is annually budgeted at \$363,098.00. Additionally, the chief epidemiologist is required to appear in Court and confirm the test results in each subsequent felony prosecution. Based on the figure of 17 felony prostitution arrests that year, taxpayers spent approximately \$700.00 for the Epidemiologist's time.

⁴¹ According to Task Force representative Carol Leigh, the county jail incarceration figures above do not include those who serve time in state prison for other (felony) offenses, who have also supported themselves through prostitution. Those who are discharged have few resources and often return to prostitution upon their release. Prostitution arrests (not necessarily convictions), or merely associating with prostitutes can be a parole violation, and they will be incarcerated in state prison, rather than county jail.

Conclusion

The total costs accounted for in this report amounts to \$7,634,750.00. Given the many areas in which we found that information is not available, or there are hidden costs, the over all expense to the taxpayer exceeds \$7.6 million annually.⁴²

Despite the heavy emphasis on enforcement as a solution, the incidence of prostitution does not decrease over time. In 1991, there were 2,518 prostitution related arrests; in 1992, 4,785; in 1993, 3,218 ; in, 1994, 5,269. Moreover, these policies are not eliminating problems articulated by the neighborhood residents.

⁴² Lynch, Theresa, and Neckes, Marilyn. December 1978

"The Cost Effectiveness Of Enforcing Prostitution Laws." Unitarian Service Committee p.17.

These figures do not include a variety of costs difficult to calculate such as social and other costs including family instability when mothers are incarcerated, and their children placed in custody; and loss of tax revenue which has been estimated at several millions dollars annually.

III. Health, Safety and Services

Health aspects of prostitution include issues of social, physical and mental health. Since various studies have established, for example, that men transmit HIV (and STDs) at a significantly higher rate than women, it is important to gear education and reform efforts towards members of the community as a whole, including male clients.⁴³

When assessing the health and social service needs of prostitutes, it is important to remember that prostitutes are varied in their experiences and needs. It is necessary to provide alternatives for those who wish to leave, as well as to improve working conditions and services for those who remain in the industry.

In addressing health safety and service issues for prostitutes, it is crucial to prioritize the needs of the most vulnerable individuals, who are at greater risk in terms of health and safety.⁴⁴ Economic development and services for low income and poor people in San Francisco improve conditions in the neighborhoods generally, with the long term effect of reducing prostitution that stems from poverty.

A number of recommendations specifically address the needs and issues of marginalized individuals and communities who are among those most adversely affected and those who experience discrimination in access to services. (See Appendix D: Health, Safety and Services: Needs Assessment)

⁴³ 34. O'Leary, Ann and Loretta Sweet Jemmott editors. 1995.
Women and AIDS: The Emerging Epidemic. New York: Plenum Publishing Corp.
See chapter by: Cohen, Judith Black and Priscilla Alexander.
"Female Sex Workers: Scapegoats in the AIDS Epidemic"

⁴⁴ See Appendix D: Health, Safety and Services: Needs Assessments

The Task Force recommendations put forth the provision of services based on a harm reduction, rather than punishment-based model.⁴⁵

Health and The Law

In accordance with Legal Recommendation (V.), the Health, Safety and Services Committee recommends that the City direct efforts to repeal mandatory HIV testing of persons convicted of prostitution, as punitive treatment of HIV+ persons exacerbates marginalization and seriously increases health risks. (See Legal Recommendations)

Counseling regarding HIV prevention, transmission and risk reduction as well as voluntary anonymous or confidential testing, should be provided to all members of the community, including sex workers and clients. As a result of information provided by Task Force members, in June 1994, Terence Hallinan and Angela Alioto submitted legislation which was approved by the Board of Supervisors urging the Mayor, District Attorney and Chief of Police to "no longer confiscate and or alter or use the fact of condom possession for investigative or court evidence purposes." In September 1994, District Attorney Arlo Smith began a "six month trial period" to study the effects of this policy. In March of 1995, Smith announced that the District Attorney's Office would cease using condoms as evidence of prostitution.

The Task Force recommends the following:

I. Change current policy and modify current contracts to provide access to a full range of health services indicated for all residents, including drug treatment programs, without discrimination

⁴⁵ Sorge, Rod. Winter 1991. "Harm Reduction: A New Approach to Drug Services"
Health PAC Bulletin page 70.

Sorge defines a 'Harm Reduction' model as, "The recent expansion of an exclusively abstinence oriented service model to include the objective of helping users at any point on the continuum of drug taking behaviors to manage their addictions and their health".

regarding sex work history or continuation in sex work during treatment.

II. Provide adequate resources for services to battered women, the homeless, youth, immigrants and refugees, and those needing rape crisis services regardless of whether they have a history of, or are currently working in prostitution.

III. With the revenues made available by eliminating budgets to enforce prostitution laws, support current and develop new peer-guided programs and services.⁴⁶ These should include outreach, including mobile outreach, drop-in centers and low threshold emergency and transitional housing. Programs should include occupational and educational programs, health and other programs for those who continue working as prostitutes, as well as those who wish to transition into other occupations including financial assistance to escape abusive and violent situations.⁴⁷

IV. Modify current contracts to finance AIDS prevention interventions targeted to clients of prostitutes- as well as those who identify themselves as "straight" men.

V. Provide in-service training to health and social service workers who work with prostitutes to increase sensitivity and accessibility of services.

⁴⁶ See Appendix D: Health, Safety and Service: Service Providers.

⁴⁷ Services must be provided with confidentiality so that sex workers can report violence, claim compensation, and receive assistance including health care, legal advice, etc., without fear of penalties, harassment, deportation or prosecution.

Drug Policy Recommendations

It is simplistic and unfounded to assume a direct correlation between prostitution and drug use, but it would also be a disservice to ignore substance issues which effect many people in San Francisco, including many prostitutes.⁴⁸

The Task Force recommends that the City of San Francisco explore options to restructure alcohol and drug use related policies and services as follows:

VI. Expand programs for needle exchange, and harm reduction programs, both street-based and site- based.⁴⁹

VII. Increase allocations for alcohol and drug-related treatment, including both residential and ambulatory programs for drug treatment, methadone maintenance, harm reduction and detox, to accommodate additional treatment slots for low income and homeless persons, and those engaged in prostitution.⁵⁰

VIII. Support the development of innovative approaches to addictions and treatment, including holistic modalities. Drug treatment must be available on request. Examine current international studies regarding drug substitutions and clinical provision of substances, and reduction in crime.⁵¹

⁴⁸ Representative Rachel West raised the concern that labeling prostitutes as drug addicts promotes stereotypes. West states that, "There is no evidence that prostitutes, in general, are any more chemically dependent than the rest of the population."

⁴⁹ The San Francisco Department of Public Health has been in the forefront of support for needle exchange programs, allocating a significant portion of resources and expanding services to a greater extent than other cities in the US. The above recommendation was formulated prior to the current DPH budget and stands, in light of current allocations, as a recommendation to prioritize these services.

⁵⁰ Programs must be accessible and sensitive to the needs of female, male and transgender sex workers of diverse racial and ethnic backgrounds, including immigrants, youth as well as adults, pregnant women and people with HIV infection.

⁵¹ See Appendix D. Health, Safety and Services: Needs Assessments: Harm Reduction: SAVIVE Clinical Trial.

IX. Ensure that drug treatment and harm reduction programs are accessible, including child care and gender-specific programs.

X. Explore alternatives to current drug policies.⁵²

⁵² See Appendix D.: Health, Safety and Services: Harm Reduction.

IV. Quality of Life Concerns

When the Task Force first convened, members pledged to remember that they were all part of the same community, all adversely affected by crime, drugs, litter and noise. The Task Force was the first opportunity for representatives from neighborhood and business groups to meet face to face with prostitutes and advocates. It was also the first opportunity to have an informed discussion involving public health and legal experts. Given the historical lack of communication, the Task Force is pleased at the full and frank airing of views.

Neighborhood and business association representatives expressed their concerns about drug paraphernalia and condoms left on the streets, congested traffic, excessive noise and other nuisances.⁵³ They sponsored two community fora: one for the Mission at Horace Mann Middle School, and one by the Polk Street Merchant's Association. At both fora, Task Force members answered questions, but more importantly, listened, as neighborhood residents expressed a wide range perspectives concerning street prostitution. Despite their concerns about noise, traffic, etc., most residents at these fora supported decriminalization or legalization of prostitution. They expressed frustration at the money spent on prostitution abatement which could not be used for much needed neighborhood improvements.⁵⁴

At the same time, the Task Force listened to testimony from sex workers who complained of abuse and violence from clients, street violence, attacks by men who target prostitutes, and even by the police.⁵⁵ It was very

⁵³ See Resource Library: Interim Report, Neighborhood Committee, Exhibit E.

⁵⁴ See Resource Library: Interim Report, Neighborhood Committee, Exhibits A & B

⁵⁵ See Appendix D.: Law and Law Enforcement: Police Misconduct Report. In March 1994 Officer Greg Breslin was charged with assaulting a prostitute. One police officer was recently thrown off the force for kidnapping and raping an employee of a massage parlor that lead to an investigation of most of the Tenderloin Task Force.

Also,
Opatry, Dennis J. March 24, 1994. "Police Officer Charged with Kidnapping with Intent to Rape" and "San Francisco Cops Expand Probe in Sex Case"

San Francisco Examiner

Also,

difficult to get such testimony because prostitutes were afraid of reprisals from police if they came forward. One forum was held at City Hall expressly for prostitutes. (See Appendix D.: Testimony). They testified about police misconduct and neglect. They uniformly expressed fear and frustration that when they are victims of crime the police do not work to protect them or to find the perpetrators.⁵⁶

Testimony regarding immigrants, African American and transgender women show that they are singled out for arrest, as well as abuse, including numerous reports of racist and homophobic verbal harassment.⁵⁷ Individuals who may be, may have been, or may appear to be prostitutes are detained and/or arrested when they simply leave their homes.⁵⁸

For prostitutes, being labeled as a criminal can mean that a woman may lose custody of her children, especially since there is a mandatory jail sentence on second conviction. Very often prostitutes "lead double lives," forced underground for fear of being evicted from their homes, losing their jobs, and the break-up of family and other relationships. Immigrants who work as prostitutes, particularly people of color, have fewer economic alternatives due to institutional racism and can face deportation if convicted of prostitution. Therefore they are unlikely to report violence against them.

Although pimping and pandering laws are ineffective and rarely used against those who exploit and abuse prostitutes, these charges are brought against prostitutes working together.⁵⁹ Women working in hotels are harassed by security guards. Landlords often refuse to rent to sex workers or overcharge

⁵⁶ See Appendix D.: Testimony.

⁵⁷ Hayes, Jeremy 1994 "Spread Your Legs, You're Under Arrest," Gauntlet, Volume 1 pages 20-32

⁵⁸ Investigation into Discrimination against Transgender People, San Francisco Human Rights Commission, September 1994. Also, Yvonne Dotson Vs. Yee, September 1995 prepared by Fania Davis.

⁵⁹ See Appendix D: Testimony.

for substandard accommodations. Sex workers who are found out may get evicted and end up working on the streets.

The majority of Task Force members came to the conclusion that decriminalization of prostitution was the best way to address the concerns of every constituency. Residents' valid concerns about quality of life, yet support for decriminalization, was a conflict more apparent than real. The conflict could be resolved by focusing on the complaints: not against prostitution itself, but by the perceived fallout or side effects of street prostitution. The best way to ameliorate poor neighborhood conditions and at the same time save the City money is to focus on the direct causes of the complaints and not on prostitution itself. Likewise, without undercover sting operations there would not be the same opportunity for police abuse and constitutional violations. If prostitutes knew they would not be arrested for reporting crime, they would not fear claiming their civil rights.

Unfortunately, no consensus was reached regarding mutually beneficial solutions.⁶⁰ After the Task Force had been meeting for nearly a year, six neighborhood/merchant organization representatives resigned following a Task Force vote in favor of decriminalization. It is clear from these differences that further work must be done to facilitate communication between those concerned with prostitution policy reform as it affects street activities. Further discussion and candid debate is clearly in order. It would be a shame to waste the progress made so far.

I. The Task Force recommends that the City encourage utilization of San Francisco's community conflict resolution program, Community Boards, to address local problems as they occur.

⁶⁰ The Task Force invited a conflict resolution facilitator from Community Boards, a non-profit chartered by the city to mediate disputes. See Appendix C. Response of city officials to requests for information.

II. Recommendations in other sections also directly address quality of life concerns. See, e.g., Legal Recommendation III., that the city respond directly to neighborhood concerns by utilizing Municipal Codes (infractions), which address issues of noise, littering and trespassing, and other constitutionally supportable municipal codes; and Legal Recommendation VI. that the City not investigate and prosecute prostitution crimes where there are no accompanying complaints.

III. Parental custody should not be denied solely on the basis of sex worker status.⁶¹

⁶¹ In the context of Family Court, activities which are legal, particularly sexual activities, are generally accepted as relevant to custody determinations. However, the mere status of being a sex worker should not preclude custody being awarded.

V. Labor Policy Issues

Strip clubs and erotic performance theaters, erotic film and video production, porn magazine publishing and phone sex switchboards, commercial parties and sex clubs-- are all part of the legal sex industry in San Francisco.⁶²

Current regulatory practices in these legal venues provide owners and management undue leverage over workers, and the number of complaints from workers grows. In one recent case, CAL OSHA investigations and Labor Commission decisions supported dancers' claims regarding working conditions. (See Appendix D.)⁶³ Current lack of oversight has also resulted in local theater owners declaring that workers are independent contractors, when they are, by legal definition, employees.

Although stigma and bias allow abuse in these workplaces, employees are afforded the right of legal recourse and the right to pursue labor disputes. Labor disputes in this are precedent setting, as sex workers' rights are not expressly written in the law.

⁶² As prostitution is defined in the State Penal Code as "Any lewd act between persons for money or other consideration," some of the activities have been viewed by police as prostitution. In fact, periodically, in cities across the US, dancers are charged with prostitution. In January and February of 1985, the Market Street Cinema and the Mitchell Brothers were raided and performers were arrested, some on PC 647(a), and others on PC 647 (b). Numerous raids have taken place at clubs around the country including a raid of The Kit Kat Club in Sunnyvale in July 1994, in which dancers were charged with prostitution. Also.

Spectator August - September 1994.

⁶³ A precedent setting case, Johanna Brever and Laddawan Passar Vs. Popular Properties, 1993. Timothy M. Sakamaki of the Labor Commission in San Francisco ruled that the practice of charging stage fees is illegal.

The recommendations below apply to current legal sex trade venues including erotic performance clubs and theaters:⁶⁴

I. Establish a review program to assure that sex trade venues comply with fair practices including health and safety codes according to CAL OSHA; provision for sick leave; workers' compensation and disability insurance according to the labor commission; and other labor and safety regulations.⁶⁵

II. Ensure compliance with complaints filed with CAL OSHA and/or the Department of Public Health by ongoing monitoring of working conditions by the above agencies, as required by law.

III. Educate investigators from the Department of Fair Employment and Housing, as well as the Equal Employment Opportunity Center, to be sensitive to sex workers' issues.

IV. Performers should only be classified by management as independent contractors when the work performed fits into guidelines for independent contractors based on labor standards. If performers are working as employees, pay hourly wages and provide benefits. Dancers/performers should not be charged stage fees in order to work. Management should not receive any percentage of dancer's earned gratuities.

V. The Bureau of Field Enforcement should be responsible for ongoing audits of erotic performance venues, in accordance with labor

⁶⁴ Prostitutes throughout San Francisco work in 'de facto legalized' businesses, through studios and outcall services. Due to their illegal or quasi-legal status, these workers have no recourse against abuses by management. If prostitution was not defined as a crime, the recommendations below would provide recourse, and benefits and responsibilities applicable in any work situation would apply.

⁶⁵ The review program (comprised of individuals who work in a variety of sex trade venues as well as consultants in labor, health and safety fields) should investigate complaints including force, coercion and harassment, and ensure that there is no management retaliation in response to complaints.

standards and regulations, to clarify employee status, and to ensure that dancers/performers are not charged illegal fees to work.

The following recommendations apply to independent contractors and self-employed people:

VI. Ensure the rights of sex trade workers to the same health insurance benefits as other self employed people, small business owners or independent contractors, the same right to police protection as other small businesses, and the right to join or form trade unions.

VII. Ensure those who provide direct contact and/or fantasy services the right to work from premises and the right to advertise.⁶⁶

The Fiscal Impact of The Sex Industry

A record of the economic impact of sex work on the City's economy should be documented in the City's financial records.⁶⁷ By omitting the record of this work, the contribution to survival of families and communities goes unrecognized and workplace safety, civil rights, protection from violence, disability and other issues for these sectors of the population are not addressed. By removing criminal sanctions, sex work would be recognized as work and the value of this work would be counted, in keeping with Task Force recommendations.⁶⁸

⁶⁶ See Appendix D: Law and Law Enforcement: Decriminalization and Regulation: Australian Prostitution Act of 1992, page 3-6. Although aspects of this law are problematic, it serves as an example of a preliminary attempt to address one stated goal: "to promote the welfare and occupational health and safety of prostitutes." Regulations attempt to protect the privacy prostitutes working out of premises; also, zoning requirements for large establishments are not applicable to individual premises.

also,
See Appendix D: Law and Law Enforcement: Bill to Decriminalise Prostitution

⁶⁷ Prostitution is recognized as productive work in the United Nations System of National Accounts (SNA) 1993 (Rachel West).

⁶⁸ Estimates of numbers of persons working or who have worked as prostitutes vary widely, based on various factors including definitions of prostitution. A 1978 study of prostitution in San Francisco estimated that there are 4,000 prostitutes.

See,
Lynch, Theresa, and Neckes, Marilyn, "The Cost Effectiveness Of Enforcing Prostitution Laws," December 1978.

Although there is currently little documented economic information about the sex industry, a sample survey was conducted by one Task Force member indicating the exponential effects these earnings have on the City's economy.⁶⁹

Unitarian Service Committee, and by the San Francisco Women's Jail Study Group, supported by a grant of the CETA and Mayor's Office. p.17

⁶⁹ St. Blaise. Vic "The Financial Impact of Prostitution in San Francisco- a sex worker's point of view" See Appendix D: Testimony.

VI. Immigration and Prostitution

Because of the threat of deportation or denial of citizenship, immigrants engaged in the sex industry are particularly vulnerable. Not only must they cope with the difficulties encountered by other sex workers such as the threat of arrest and violence, some may also face deportation from the Immigration and Naturalization Service.⁷⁰

Although recent international debate has focused much attention on forced trafficking and kidnapping, the abuse and exploitation of immigrants reported to the Task Force consisted of harassment by authorities and financial exploitation of immigrants and refugees including voluntary sex workers.⁷¹

One result of this pressure is that many immigrants engaged in the sex industry are reluctant to report abuses such as rape, robbery and other forms of violence, including illegal curtailment of their freedom of movement. For the same reasons, many such workers choose not to avail themselves of outreach programs on HIV/AIDS prevention and similar services.⁷² By decriminalizing prostitution, some of these pressures might be mitigated or abated. (See Appendix D: Laws and Law Enforcement: Resolution for Decriminalization Regarding Immigrant Issues.)

⁷⁰ "Title 6 Exclusion and Deportation Public Law 601, 104 STAT.5067-5068"

According to outreach worker Dawn Passar, recent INS campaigns have begun to target immigrant women. "Police go their homes with guns, and don't even speak their language, so the police can't even explain why they are being arrested. Even those who are only suspected of being prostitutes, may be deported based on suspicion, rather than conviction."

⁷¹ According to National Organization For Women representative Teri Goodson, anti-trafficking laws work against the welfare of prostitutes. "As prostitution is illegal and grounds for deportation, immigration officials investigating circumstances of suspected kidnapping or forced labor, though unable to prosecute well protected traffickers, are often likely to arrest and deport immigrant women despite reprisals upon her return. Laws against forced labor, violence, blackmail and other abuse should be used to combat abusive traffickers".

⁷² Immigrants should have access to services on the same bases as other residents. See Health, Safety and Services Committee Recommendations.

The Task Force recommends that the City lobby the INS to:

I. Grant asylum or immunity to those who are brought into the United States for the purpose of prostitution and protect them from INS prosecution or punishment.⁷³ Further, it is recommended that resources be provided for employment, housing, social programs, legal and other resources to enable immigrants and refugees to leave exploitative or abusive situations, and to have the option of returning to their country or staying in the United States without threat of prosecution.⁷⁴

II. Remove Prostitution-related crimes from the INS list of moral turpitude offenses that require exclusion or deportation. The Task Force recommends that the City take this position and further, lobby federal legislators to amend federal policy.

⁷³ In 1992, the San Francisco Board of Supervisors approved precedent setting legislation that declared San Francisco a "City of Refuge" in order to protect non-citizens from the deportation by the INS.

⁷⁴ Chew, Lin Lap Foundation Against Trafficking In Women January 1996 Page 3: "Allocate resources to provide comprehensive programs designed to heal and rehabilitate into society victims of trafficking including through job training, legal assistance and confidential health care and take measures to cooperate with non-governmental organizations to provide for the social, medical and psychological care of the victims...."

VII. Youth Issues and Policy

Youth are involved in prostitution for a wide variety of reasons, similar to adults. These reasons are compounded because of legal restrictions based on age, especially in employment and housing. Because of labor laws, established to "protect" those under the age of eighteen, most youth are not legally able to work more than part time. For young people who are living on their own and can legally work only part time at a job that pays minimum wage and offers little in terms of skill development and advancement, there are few opportunities for survival other than working in the underground economy, which includes sex work.

Many young people are forced to survive on their own to escape violent and abusive family situations. The dangers they face on the streets may be less than the dangers they face at home. While on their own, there is a total lack of affordable housing options for those under the age of eighteen, unless they are emancipated. In order to become emancipated, however, it is necessary to prove a legal means of supporting oneself. Recommendations below emphasize strategies to reduce the harm done by legal restrictions and an arcane system of "child care."⁷⁵ (See Appendix D: Testimony: Youth Policy Statement.)

While we realize that our society has a long way to go to adequately address civil and human rights for young people, and young women in particular because of the disparity in social services for youth,⁷⁶ and that limited financial resources compete for the most effective interventions, the Task Force submits the following recommendations:

⁷⁵ Velasco, Nelly. 1994. "Position Paper regarding the Issues Related to Young Women Working in the Sex Trades" written for the Street Survival Project. page 1.

"Adults must stop pathologizing risks taken by youth, which are a part of life." According to Velasco, one recent survey of services found that there were only four emergency shelter beds specifically available for young women under 18 in San Francisco. Providing affordable housing could reduce reliance on survival sex for youth.

⁷⁶ Ibid.

The Task Force recommends that the City focus on independent housing, job development and specific shelter alternatives for incarcerated young women.⁷⁷ Provision of services, not detention, should be the first priority for youth. Therefore, the Task Force recommends that the City:

I. Establish a mandate to preserve and expand youth employment. Young people need to be paid a living wage (\$8.00 - \$10.00 an hour, minimum) and have opportunities to develop job skills beyond the service economy. Equal opportunity programs should also include youth.

II. Ensure that services available for adults are also available for youth.⁷⁸ These should include housing, health care including pre-natal care and abortions, rape and abuse counseling, drug treatment and detox programs, methadone programs, needle exchange, and self-defense training. Accessibility of services should not be dependent on parental consent.

III. Increase the number of Public Defenders available to people under the age of eighteen.

IV. Increase services available to young women in order to end the gender disparity in social services for youth.⁷⁹

V. Increase the number of shelter beds for young women in the juvenile court system who cannot be released to parents or guardians.⁸⁰

⁷⁷ Although an increase in services is needed for young people in general, there are significantly less services and resources available to young women.

⁷⁸ Currently there are a range of programs and services that specifically exclude youth.

⁷⁹ Velasco states that currently, services for girls, including girls who have engaged in survival sex or worked in the sex industry, are woefully underfunded.

⁸⁰ According to an interview with Patricia Lee, Public Defender at Youth Guidance Center, there are two shelter beds for girl and six for boys.

VI. Increase funding for peer-run support groups for youth in the sex industry, including transitional services and programs to provide alternatives.

VII. Youth with experience in prostitution or survival sex should be employed as peer educators, consultants and speakers.

VIII. The San Francisco Youth Commission should investigate the efficacy of child labor laws, age of consent laws, and emancipation. Youth with experience in sex work should be included in the Commission. City departments need to be responsive to the recommendations of this board.

VIII. Implementation of Recommendations

Although six representatives of merchant/neighborhood associations of the Task Force were in opposition to decriminalization, the majority of Task Force members reached consensus on recommendations submitted.

The Task Force recognizes that some issues remain controversial. Therefore the Task Force is committed to pursuing mechanisms to resolve the controversies. Likewise many uncontroversial recommendations, particularly those concerning social services, should be implemented immediately. For these reasons the Task Force recommends the establishment of an ongoing committee to resolve these controversies, pursue long term goals, and to monitor conditions within the sex industry on an immediate basis.

I. The San Francisco Task Force on Prostitution recommends that the Board of Supervisors establish a staffed committee to:

- o Implement the Task Force recommendations
- o Investigate arrest procedures, conditions of incarceration, suspected incidents of misconduct, and civil rights violations of prostitutes and suspected prostitutes, in conjunction with the Human Rights Commission and the Office of Citizen Complaints.⁸¹
- o Provide a venue through which sex workers can file anonymous grievances.

⁸¹ Victims of proven violations should be compensated and offenders should be subject to appropriate disciplinary measures.

IX. Minority Opinions

San Francisco Task Force on Prostitution

Minority Opinion

by Michael Stepanian, Esq.

with Erin Crane

Concurring Participant

Carol Stuart

submitted to the Board of Supervisors

City and County of San Francisco, California

March 1996

Having heard testimony presented at the Task Force meetings, conducted my own investigation, and practiced criminal law in San Francisco for nearly thirty years, it is my opinion that legal or de facto legal prostitution zones would be the most effective solution to the problems associated with prostitution in San Francisco.

Such zones could vary in character in order to be appropriate to the various neighborhoods in our City. Neighborhood groups could participate in establishing these sites. Handicapped services would be available to make access to these places available to everyone. By moving the sex industry into zones, neighborhood problems associated with prostitution, including traffic congestion, noise, cruising, and the exposure of children to prostitution would be eliminated. Male and female sex workers could operate openly, but with the discretion appropriate to the various locations.

A variety of services should be available at these zones to ensure the safety and health of all involved. There should be vocational, health, counseling, clinics and educational services available to the sex workers. Organizations such as COYOTE, NOW, the Haight Ashbury Free Clinics, Inc., and private organizations could assist sex workers with various needs, including assistance to those wishing to move in or out of the business.

The adoption of zones would also limit extortion, blackmail and physical harm to patrons as well as sex workers. In addition, it would destigmatize the relationship between the parties and the fact of arrest, thereby improving the quality of life for all involved.

This City has spent a tremendous amount of money arresting and prosecuting people involved in the sex industry, without any hope of stopping it. Revenue gained from zoning regulation would be an asset, rather than a drain, to the city.

San Francisco Task Force on Prostitution
Minority Opinion
by US PROStitutes' Collective

submitted to the Board of Supervisors

City and County of San Francisco, California

March 1996

1. Opposition to Use of Municipal Codes

US PROS opposes the proposal for the police to issue tickets for nuisance infractions (Municipal Codes) because it can be used to keep prostitutes criminalized.

Tickets and fines could pile up and sex workers could end up in jail for non-payment of fines or have to go back on the street to pay fines. In England, for example, when citations were imposed, they were seen as a tax on sex workers, and more tickets forced women to work longer hours to pay them off.

Municipal codes must only be applied to respond to specific complaints and substantiated in court, and not as a replacement for the prostitution laws."

2. Zoning

Although the following statement is in agreement with the Task Force recommendations for decriminalization, it is being included in this section because it addresses the issues of zoning raised in the minority opinion by Michael Stepanian.



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DECRIMINALIZATION OF PROSTITUTION

BACKGROUND

The Task Force on Prostitution has agreed to a pathbreaking decision recommended by the Executive Committee of the Task Force. It calls for the decriminalization of prostitution, in other words, prostitution would no longer be a criminal act. Decriminalization should now be the framework from which the four committees of the Task Force would formulate other recommendations.

The eyes of the general public, including sex workers, and their advocates, residents in red light districts, women's rights activists, academics, as well as the eyes of the media, are on the Task Force, awaiting the results of its work on an issue that is begging for new approaches and solutions. Also, internationally, preparations are now underway for the upcoming Forth United Nations World Conference on Women to be held in Beijing, China in the summer of 1995. At the upcoming UN Conference, governments will develop a Platform For Action for women taking UN member nations into the next century; the issues of sex work, sex workers, and the laws that now criminalize them, are on the agenda.

As history is in the making, a number of questions come to mind. Will the Task Force clarify the fundamental issues involved in the sex industry? What standard will the Task Force establish in its recommendations, not only for San Francisco, but for the rest of the country? Will the Task Force settle only for temporary measures and the lowest common denominator or accept the responsibility to cut to the heart of the matter and propose solutions that can and will work, thereby establishing a principled precedent? What is the relationship between recommendations that can be immediately implemented and those that policy makers and the city as a whole should commit to work towards? Will the Task Force take the opportunity to forge a new direction or just reinforce old laws and old stigmas?

As an active member of both the Executive Committee and the full Task Force, US PROS believes that the Task Force has the opportunity as well as the responsibility to play a historic role not only in furthering the debate on prostitution, but also in putting forward comprehensive policy recommendations that take into account the history, the practice, and the failure of present regulations that now criminalize prostitution.

DECRIMINALIZATION

Historically, the movement for decriminalization has called for abolition of laws which criminalize prostitution, so that prostitution would no longer be a criminal act. Decriminalization of prostitution would lay the basis for a legal, political and

social framework and climate, in which sex workers, as other workers, would be granted such basic legal, economic, civil, and human rights as police protection against violence, extortion of all kinds, rape, etc. With prostitution no longer criminalized, sex workers would not be vulnerable to pimps, drug dealers, extortionists and others who profit off the illegality of prostitution. Crimes of violence such as assault, rape, kidnappings, burglaries, etc. would be dealt with as they should be, under existing laws already established to address them.

US PROS has found that as the economic crisis deepens, the number of prostitute women and men on the streets, not only in San Francisco but in other cities throughout the US, has increased. In fact, studies show that when Aid to Families with Dependent Children (AFDC) is cut, the number of AFDC mothers arrested for prostitution increases. Over the past decade, we have also seen a massive increase in homelessness, including among women, children and young people. The number of services and safe homes for 'juvenile runaways' is extremely limited as are services for other people who find themselves on the streets for a variety of reasons.

There is a clear connection between conditions created and exacerbated as a result of economic crises, and community tensions between people who find themselves living and/or earning a living on the streets and other residents. One group is pitted against the other and prostitute women and men are blamed for existing neighborhood problems, when in fact, these problems are both created and furthered by economic conditions as well as the criminalization of prostitution. Each sector then defends what seem to be its own interests. Red light area residents know very well that tensions and complaints in neighborhoods have increased as poverty and cuts in city services have increased.

However, once the criminal context around sex workers is lifted, the concerns of neighborhoods now in 'red light districts', can be approached and resolved in new, productive and creative ways. For example, nuisance issues such as noise, traffic, litter, and other similar issues would be dealt with under existing civil laws. The fact that only 15-20% of prostitution is on the streets, shows that prostitution can and does go on 'inside' in ways that are not disruptive to community life. Decriminalization would allow prostitute women and men to advertise and work from premises and therefore not create the need for 'red light districts'.

Opinion polls and media talk shows have already shown that most of the public believe that enforcement of the prostitution laws is futile and a waste of taxpayers' money. Jurors in SF have consistently refused to sit on cases and/or to convict sex workers. Many law enforcement officers, established media representatives and others in positions of power have been known to say privately that they agree that criminalizing prostitution is ineffective and that they would support a new approach.

Decriminalization would also have to involve a shift in police priorities. The hundreds of thousands of taxpayers dollars and police time (also taxpayers dollars) that are spent now on attempting to enforce the prostitution laws could be redirected. In fact, we know that money now spent on enforcing the laws against prostitutes, would be better spent on housing, services, training and other programs to help women and other sex workers find viable economic alternatives to prostitution, as well as to help fund effective and holistic programs for those seeking help, with health and substance abuse issues.

ZONING

In contrast to the comprehensive approach of decriminalization, under zoning, a recommendation proposed by some on the Task Force, prostitution would still be illegal. Zoning and decriminalization are entirely different and separate proposals. Zoning would allow sex workers to work in limited areas and under heavily controlled conditions. Zoning would not remove the criminal stigma of prostitution nor protect the basic human rights of prostitutes. It is important not to confuse decriminalization and zoning as meaning the same thing, to do so would create confusion and dangerously jeopardize and misrepresent a movement that has worked for decades to lift the criminal definition of prostitution. In countries where zoning exists it has generally meant that:

- neighborhoods do not want zones near them, so zoning areas are pushed into industrial areas that are dangerous and isolated
- the areas where sex workers are forced to work are segregated and isolated, and people working there are at the mercy of anyone anxious to exploit and/or make money off of them
- sex workers who work in zones can be easily found and identified by parents, partners, relatives, children, and other loved ones, and by neighbors, social services, school officials, the INS, etc. Therefore, young people, mothers, immigrant women and men and others who fear being identified as prostitutes are not able to work in the zoning areas and are still criminalized
- prostitute women and men working outside of the area are still criminalized, arrested, etc., and immigrant, Black, and other sex workers of color are singled out for arrest and prison
- in Australia and Holland, sex workers are often arrested on their way to and from the zoning district and high fines are imposed
- only 10% of sex workers in Victoria (Australia) and 12% in Hamburg (Germany) work in the zones
- prostitute women and men have to register with the police, and zoning has not changed police priorities, as the police have to enforce the zones and restrict prostitution to it, although often the police wash their hands of the area and provide no protection
- zoning is a violation of the right of privacy, a basic human right

SUMMARY

It is crucial that the Task Force puts forward decriminalization meaning the lifting of the criminal definition of prostitution and recognises the civil and economic rights of sex workers in clear and unambiguous language. We are not implying that decriminalization be the only recommendation of the Task Force, but we strongly believe that decriminalization must be the framework for other recommendations coming from both the committees and the Task Force as a whole.

A clear recommendation for decriminalization would clarify what is needed for forward looking solutions that actually work, get to the heart of the issue, strengthen the human and civil rights of sex workers, and at the same time provide a realistic approach and solution to the concerns of neighborhood organizations. A call for decriminalization would in fact strengthen most of the recommendations put forward by the Task Force.

Poverty is the reason most women and men go into prostitution in the first place, either as a way of getting out of poverty or to refuse it; *poverty is the crime not prostitutes*. Internationally, a number of countries have been grappling with and searching for a new realistic and practical approach to the issue of prostitution. Isn't it about time, and doesn't the Task Force have the responsibility and shouldn't we be held accountable to clearly, honestly and directly address the fundamental issue of sex work and sex workers, rather than adopt what can only be temporary and band-aid proposals?

December 20, 1994

**San Francisco Task Force on Prostitution
Minority Opinion**

by Vic St. Blaise

submitted to the Board of Supervisors

City and County of San Francisco, California

March 1996

Open Your Golden Gates- Why San Francisco Needs Prostitution

One can easily find written opinions of the 'solutions' and 'alternatives' to the 'problem of prostitution. I present some ideas on why our city should encourage prostitution, and reap a financial and civil harvest.

During my continuing six and a half years as a full-time prostitute, I have observed, postulated and experimented. With a few changes, what has been largely a positive experience for me can be even more so, with added favorable effects on my community.

This carnal business of prostitution best analogizes with the human body itself. Most of it functions out of sight, even from your own perspective, wherever that may be. Vast areas of the unknown mingle with the familiar, characteristics vary from individual to individual and can change over time, but basically, treat your body well and it rewards you. Try to fit into a pair of jeans three sizes too small and you have a good mental picture of the current prostitution related laws. By restricting how we work, spend our money, and associate with other prostitutes, the city loses.

Whenever out-of-towners step through my door, or I provide my own special 'room service' at our fine hotels, cash comes to San Francisco. The City misses an opportunity by not creating and promoting an image friendly to prostitution. Sure, there are plenty of reasons to visit San Francisco, but once is plenty for Coit Tower or Fishermen's Wharf unless you really loved it. Now imagine if Coit Tower was a different, beautiful, unknown, and orgasmic experience every time, at a much higher price, and you can see why the San Francisco Convention and Visitor Bureau should consider us golden landmarks.

How much we contribute to the city economy is unknown (see my economic impact study in the Appendix), that we do is impossible to ignore. Because money will always flow for professional sexual services, why not enhance the potential effect? Removing the laws would enable us to divert our under the mattress money into substantial and long term investments such as bank accounts, stocks and real estate. We could pool our money together for issues important to us such as health insurance and child care.

That other part of the prostitution equation, sex, also has plenty of potential power to improve The City. That prostitutes have sex is another understatement, but again the benefits of this experience, as well as the non-sexual activities that occur during the course of our work, is squelched and unknown. Similarly, laws hinder the extent that prostitutes' knowledge can benefit the community.

As far as sexual skills, we have much to offer as educators, researchers, and service providers. We have always been used in such and other capacities, sometimes to our serious detriment, but because of current laws we have little say in our involvement in extra curricular activities. In the proper setting, we can use our knowledge to further explore and understand sexuality.

Because we intimately come in contact with many people from various backgrounds, prostitutes serve as a civic aerator. Our social interactions mix across every type of barrier, our earnings come from every economic sector, and we players change constantly. In these ways and others we function as a cultural institution much like the arts. By creating a climate in which prostitution can thrive, The City can help prevent social and fiscal stagnation.

Lastly, prostitution serves as a marker of how we treat each other. The desire for human interaction is so strong that even when suppressed, it reappears, although not in its natural or healthy form. For a clear example of this phenomenon, just look at the suicide rate among queer youth. Under the law, whores are not allowed the best options for work. We must be guarded, isolated, and in constant flight response to avoid detection or else we risk prosecution. When we are free of the laws, we will better be able to contribute to our community as open participants.

Zoning and other so-called 'realistic' alternatives never prioritize the issues most important to prostitutes: making a decent living, looking after our health and safety, and creating and keeping meaningful relationships. Rather the goal is to remove the visible and uncomfortable elements of the business into someone else's backyard.

The violence and shame and other evils associated with prostitution do not come from the exchange of sex for money, yet are used as excuses to justify assaults on the profession. What unnerves members of various neighborhood associations

is the same thing that titillates them: acknowledged sexuality. It scares them, so they attack, thus prostitution becomes the tattered flag captured from the wrong territory. Meanwhile the real enemies roam freely.

The current fear of sexuality is a sulfurous coal mine, and we the colorful canaries. Kept in control in our various cages we serve little purpose. Instead we should fly free to lead the way out of the abyss. Prostitution is a human act: Human beings interacting in one of the most human of activities. To further harm such an exchange, that is criminal.

Appendix A.

Task Force Membership and Establishing Legislation

**San Francisco Task Force on Prostitution
Final Report**

Task Force Membership and Participants

Asian AIDS Project

Dominic Perez

Center For Southeast Asian Refugee Resettlement

Adam Tau

Commission on The Status of Women

Carol Leigh

*** Concerned Business Persons of the Tenderloin**

Phil Faight

COYOTE

Margo St. James

Department of Public Health, AIDS Office

Marshia Herring

*** Hayes Valley Neighborhood Association**

Patricia Walkup

National Lawyers Guild

Celia McGuinness

National Organization for Women

Teri Goodson

Mayor's Office

Anne Kronenburg

*** Mission District Residents For Safer Streets**

Ron Norlin

*** Nob Hill Safe**

Jeanne Powell

Office of the District Attorney

Terri Jackson, Ronan Byrne

Office of Supervisor Terence Hallinan

Andy Ilves, Jean-Paul Samaha

**San Francisco Task Force on Prostitution
Final Report**

Office of the Public Defender
Grace Suarez

Police Department
Lt. Joeseeph Dutto, Mike Curran, Gary Pisciotto

*** Polk Street District Merchant's Association**
Gary Zodrow

Project Aware
Judith Cohen

*** Save Our Streets**
Art Conger

Street Survival Project/Proactive Youth Coalition
Nelly Velasco, Kelly O'Neil

US PROStitutes Collective
Rachel West

Ex-officio' members
Office of Senator Milton Marks
Carol Stuart

The City Attorney

Community representatives:
Gloria Lockett
Mai Nhung Le
Kiki Whitlock
Vic St. Blaise

At-large representatives:
Mike Stepanian
Christine Tayluer
Christine Beatty

*** Task Force participants resigned January 1995.**

San Francisco Task Force on Prostitution Final Report

Community participants and consultants: Erin Crane, Elizabeth Bernstein, Carol Draizen, Daisy Ford, Lori Nairne, Bruce Widern, Jim Thorne, Odessa Smith, Priscilla Alexander, Louis Kremnitzer, Johanna Breyer, Caroline Lee, Mara Torres, Michael Kim, Dawn Passar, Roe Johnson, Victoria Schneider, Rita Adrian, Nicole Eslamieh, Felicia Ward, Kristen Bachler and Christina Gomez.

The San Francisco Task Force on Prostitution would like to thank the following people for their contributions to the Final Report:

Carol Leigh, Celia McGuinness, Carol Stuart, Rachel West, Dr. Judith Cohen, Margo St. James, Carlton Smith, Pat Whelehan, Ph.D., Vic St. Blaise, Dawn Passar, Elizabeth Bernstein, Teri Goodson, Lori Nairne, Cynthia Chandler, Nelly Velasco, Kelly O'Neil, Mai Nhung Le, Roe Johnson, Kiki Whitlock, Johanna Breyer, Gloria Lockett, Belma Gonzalez, Larry Grant, Christine Tayleur and James Geffert.

Exhibit A

RESOLUTION NO.

[Task Force on Prostitution]

ESTABLISHING A TASK FORCE ON PROSTITUTION TO MAKE
RECOMMENDATIONS TO THE BOARD OF SUPERVISORS ON LEGISLATION AND
POLICY REFORM AS RELATED TO THE CITY'S PROSTITUTION LAWS AND
POLICIES, AND SHALL INCLUDE REPRESENTATIVES FROM THE MAYOR'S
OFFICE, BUSINESS GROUPS, NEIGHBORHOOD GROUPS, LAW ENFORCEMENT
AGENCIES, PUBLIC HEALTH AGENCIES, SOCIAL SERVICE AGENCIES, CITY
DEPARTMENTS, WOMEN'S RIGHTS ADVOCATES AND IMMIGRANT AND
PROSTITUTE RIGHTS GROUPS.

WHEREAS, San Francisco residents, business owners and neighborhood
organizations have expressed legitimate concerns about the impact of prostitution on
their neighborhoods; and,

WHEREAS, the criminal nature of prostitution has led to widespread beatings
and the victimization of prostitutes and has attracted crimes including robberies, drug
use and violence to San Francisco streets and neighborhoods; and,

WHEREAS, the continuing economic recession, the lack of police resources
and the overcrowding in our jails make it difficult if not impossible to deal with
prostitution as a traditional law enforcement issue; and

WHEREAS, the issue of prostitution is complex and involves social, economic,
and legal factors; and,

WHEREAS, it is incumbent upon local government to explore alternatives to
dealing with prostitution as it affects San Francisco's economy, the public health and
safety of its residents and the City's overall quality of life; and

WHEREAS, a public forum is needed to allow for debate and the sharing of

1 information about issues related to prostitution and to study alternatives to the present
2 system; now, therefore, be it

3 **RESOLVED**, That the Board of Supervisors of the City and County of San
4 Francisco hereby establishes the Prostitution Task Force consisting of twenty (21)
5 members who shall represent a broad cross section of San Francisco with regard to
6 race, ethnicity, gender, gender identity, age, socio-economic status and sexual
7 orientation; and, be it

8 **FURTHER RESOLVED**, That the Task Force shall include representatives from
9 the Mayor's office, business groups, neighborhood groups, law enforcement
10 agencies, public health agencies, social service agencies, City Departments,
11 women's rights advocates and immigrant and prostitute rights groups; and, be it

12 **FURTHER RESOLVED**, That the Task Force shall be established and
13 appointed by the Board of Supervisors as follows:

14 One (1) member representing the San Francisco Chamber of Commerce;

15 Three (3) members representing neighborhood groups, one each from Save Our
16 Streets (SOS); Mission District Residents for Safer Streets; and Polk Street District
17 Merchants Association;

18 Three (3) members representing diverse prostitute populations and advocacy groups,
19 including one representative of Coyote; one of the U.S. Prostitutes Collective, and one
20 transgender representative;

21 One (1) member representing outreach organization to gay male prostitutes;

22 One member representing outreach organization to the African American community;

23 Two (2) members representing AIDS/HIV prevention and education service providers
24 with experience in outreach to prostitute populations, one each from the Asian AIDS
25 Project and Project Aware;

One (1) member representing the Center for Southeast Asian Refugee Resettlement;

One (1) member representing the National Organization for Women (NOW);

One (1) member representing the National Lawyers' Guild; and, be it

FURTHER RESOLVED, That said Task force shall include additional members to be appointed as follows:

One member representing the Mayor's Office, to be appointed by the Mayor ;

One member representing the Police Department, to be appointed by the Chief of Police;

One member representing the Department of Public Health, to be appointed by the Director of the Department;

One member representing the Public Defender's Office, to be appointed by the Public Defender;

One member representing the District Attorney's Office, to be appointed by the District Attorney;

One member representing the City Attorney's Office, to be appointed by the City Attorney;

One member representing the Commission on the Status of Women, to be appointed by the Director of the Department; and, be it

FURTHER RESOLVED, That the Mayor and the Departments are to make their appointments and advise the Board of Supervisors of same within fifteen (15) days after this resolution takes effect. The Board of Supervisors shall also make appointments within thirty (30) days after taking effect; and, be it

FURTHER RESOLVED, That the Task Force shall adhere to Robert's Rules of Order, and shall conduct its business consistent with the provisions of the Ralph M. Brown Act, which governs certain procedures related to the conduct of meetings by public bodies; and, be it

FURTHER RESOLVED, That a quorum for the conduct of business by the Task Force shall be the presence of at least eleven (11) of the members of the Task Force; and, be it

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FURTHER RESOLVED, That any member of the Task Force who, following their appointment, misses more than two unexcused, regularly scheduled meetings shall be deemed to have resigned from the Task Force, and a new member shall be appointed to the vacated position; and, be it

FURTHER RESOLVED, That in the event of a vacancy, a successor shall be appointed to fill the vacancy consistent with the process and requirements to appoint the previous appointee; and, be it

FURTHER RESOLVED, That the Mayor, the Board of Supervisors and the various City Departments shall provide in-kind professional and administrative staff to the Task Force; and, be it

FURTHER RESOLVED, That members of the Task Force shall not be compensated, nor shall they be reimbursed for expenses. The Task Force may seek funds from public and private agencies to carry out its functions. Any money received other than from the City shall be deposited with the City Treasurer; and, be it

FURTHER RESOLVED, That said Task Force shall do a comparative study of current prostitution laws and regulations in other cities in the United States and internationally; and, be it

FURTHER RESOLVED, That said Task Force shall explore all options for reform of prostitution laws, social services and law enforcement practices in San Francisco; and, be it

FURTHER RESOLVED, That said Task Force shall present an initial progress report six months after its inception to the Board of Supervisors and shall provide a written report of its recommendations to the Board of Supervisors one year from the date of their initial meeting, and that this Task Force shall be automatically dissolved upon receipt of said report.

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**Appendix B
Existing laws and ordinances relating to prostitution prohibition**

Current laws governing prostitution and solicitation in San Francisco are state-wide laws dating from 1961. Other California laws against prostitution date from the turn of the century. Those are also local San Francisco Municipal Police Codes under which prostitutes are cited.

All the laws are misdemeanor or infraction offenses except pimping, pandering and agreeing, soliciting or engaging in prostitution if one is HIV positive, which are felony offenses.

While all consenting sexual behavior between adults that was not commercial was decriminalized in California in 1973, prostitution remained criminalized.

San Francisco Municipal Code

SFMC 215. LEWD AND INDECENT ACTS PROHIBITED. It shall be unlawful for any person to engage in or be a party to or to solicit or invite any other person to engage in or be a party to any lewd, indecent or obscene act or conduct. (Ord. 1.075, Oct. 11, 1938)

SFMC 225. SOLICITING PROSTITUTION PROHIBITED. It shall be unlawful for any person on any public street or highway or elsewhere, to solicit, by word, act, gesture, knock, sign or otherwise, any person for the purpose of prostitution. (Ord. 1.075, Oct. 11, 1938)

SFMC 240. UNLAWFUL TO OFFER OR AGREE TO COMMIT PROSTITUTION, ETC. Every person is guilty of a misdemeanor who

(a) Offers or agrees to commit any lewd or indecent act or any act of prostitution; or

(b) Offers to secure another for the purpose of committing any act of prostitution, fornication, assignation or for any other lewd or indecent act with any other person; or

(c) Is in or near any thoroughfare or public place for the purpose of inducing, enticing or procuring another to commit an act of lewdness, fornication or unlawful sexual intercourse; or

(d) Knowingly transports any person to any place for the purpose of committing any lewd or indecent act or any act of prostitution; or

(e) Knowingly receives, offers or agrees to receive any person into any place or building for the purposes of assignation or of performing any

**San Francisco Prostitution Task Force
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act of lewdness or fornication, or knowingly permits any person to remain there for any such purposes; or

(f) Directs any person to any place for the purpose of committing any lewd or indecent act or any act of prostitution or fornication; or

(g) In any way aids or abets or participates in the doing of any of the acts prohibited by subdivisions (a) to (f) inclusive, or this section.

(Ord. 4428, 1939, 1947)

Although most "sweeps" are conducted pursuant to Municipal Code sections, these cases are almost never charged.

PROSTITUTION-RELATED STATUTES

SOLICITATION

In California, prostitution is punishable as one of the types of disorderly conduct prohibited under Penal Code section 647(b). The statute applies to both the customer and the prostitute.

§ 647 Disorderly Conduct

Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this division unless some act, beside the agreement, be done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

Solicitation occurs when a person has the specific intent to engage in either sexual intercourse or lewd acts in exchange for money or other consideration for purpose of sexual arousal and gratification, and then takes some step in furtherance of that act. (*People v. Dell* (1991) 232 Cal.App.3d 248, reh denied and modified, rev. denied.)

A "lewd act" is defined as "any act which involves the touching of the genitals, buttocks or female breast of one person by any part of the body of another person and is done with the intent to sexually arouse or gratify".

In order to be found guilty of prostitution, the law requires (1) the specific intent to engage in prostitution, that is, to go through with the act. (*People v. Norris* (1978) 88 Cal.App.3d Supp 32, 38.) In other words, an offer to engage in prostitution, merely made in jest or for some reason other than to actually go through with the act, is not punishable. (*People v. Love* (1980) 113 Cal.App.3d Supp. 1, 13.)

In addition to the specific intent requirement, the law requires (2) an agreement to engage in a specific act and (3) an overt act done in furtherance of the agreement.

An agreement to engage in a specific act requires that both parties agree to a particular act for a

KEEPING A HOUSE OF PROSTITUTION

There are a number of lesser known statutes that at certain times are or were used to plea bargain down prostitution charges. On rare occasions, they are used to prosecute "madams."

§ 315. Keeping or residing in house of ill-fame

Every person who keeps a house of ill-fame in this state, resorted to for the purposes of prostitution or lewdness, or who wilfully resides in such house, is guilty of a misdemeanor; and in all prosecutions for keeping or resorting to such a house common repute may be received as competent evidence of the character of the house, the purpose for which it is kept or used, and the character of the women inhabiting or resorting to it.

§ 318. Prevailing upon person to visit place for gambling or prostitution

Whoever, through invitation or device, prevails upon any person to visit any room, building, or other places kept for the purpose of illegal gambling or prostitution, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not exceeding six months, or fined not exceeding five hundred dollars(\$500) , or be punished by both that fine and imprisonment.

OTHER STATUTES AND ORDINANCES

OBSTRUCTING THE SIDEWALK OR STREET

In San Francisco and a few other jurisdictions, the District Attorney uses the public nuisance statutes, Penal Code sections 370 and 372, to arrest and prosecute "known prostitutes" who allegedly block the sidewalk and street.

The use of this law was challenged on the grounds that it was unconstitutionally vague both on its face and as applied, and that it was pre-empted by Penal Code section 647c (obstruction of the sidewalk by persons). San Francisco Municipal Court Judge Herbert Donaldson granted the demurrer on the first ground. The District Attorney appealed, and the Appellate Department of the Superior Court reversed Judge Donaldson's ruling on the grounds that the decision of a higher court, *Pain v. Municipal Court of the City and County of San Francisco* (1968) 268 Cal.App.2d 151, found the law not void for vagueness or overbroad, and that lower courts were bound by that decision. (*People v. Clisbee* (Oct. 7, 1993) CR 4625-4641 (unpublished opn.)) Neither Judge Donaldson nor the Appellate Department reached the remaining issues: unconstitutional as applied and pre-emption. The cases are now back in Municipal Court and demurrers have been filed on the remaining issues.

The practice of the police, as reported to the courts, is to admonish "suspected prostitutes in the Tenderloin area that they were a public nuisance, recorded the time and place of the admonishment and photographed the individual. When the same individuals were subsequently encountered in the area engaging in suspected prostitution activities, they were arrested for maintaining a public nuisance." Generally, the persons were arrested for blocking either the sidewalk or street, i.e., by hailing passing motorists and causing them to stop and talk.

§ 370. Public nuisances

Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a public nuisance.

§ 372. Maintaining a nuisance, a misdemeanor

Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

specific price. Bartering does not amount to an agreement until there is a meeting of the minds, i.e., a final agreement to exchange a specific act for a specific price. (*People v. Davis* (1988) 201 Cal.App.3d Supp 1,4.)

An overt act done in furtherance of the agreement must be committed after the final agreement is reached. (*Davis, supra* at 4.) Driving to the place at which the act is to occur is an overt act. Getting into a vehicle before an agreement is reached is not. (*Id.*)

It can be argued that verbal statements relating to condoms are not overt acts. The San Francisco District Attorney's office takes the position that the production of a condom is an overt act. Defense attorneys argue that carrying a condom is not an overt act, since all responsible sexually active persons carrying condoms. There are no published cases reaching the issue whether possession or production of a condom may constitute the required overt act.

PENALTY

Violations of Penal Code section 647(b) are misdemeanors. Misdemeanors are punishable by up to six months' imprisonment in the county jail. (Penal Code section 19.) County jail terms can be served through the Sheriff's Work Alternative Program. Section 647.1 provides for an additional \$70 fine, dependent upon the defendant's ability to pay.

Section 647 further provides that if a defendant has one prior conviction for solicitation, the fact of that conviction must be alleged in the complaint, and if found true or admitted, the person must serve at least 45 days in jail. If the defendant has two or more prior convictions, 90 days in jail is mandatory.

MANDATORY HIV TESTING

Section 1202.6 provides for mandatory HIV testing of persons convicted of solicitation. (Law upheld in Love v. Superior Court (1990) Cal.App.3d 736, review denied.) See also: Love v. Superior Court: Mandatory Aids Testing and Prostitution, Karin Zank, 22 Golden Gate University Law Review 795 (1992).

Section 647f provides that a person convicted of solicitation, who tests positive for HIV pursuant to section 1202.6, and is subsequently again convicted for solicitation, is guilty of a felony, punishable by 16 months, two or three years in prison. Penal Code section 18.

§266h. P.C. Pimping

Any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person, is guilty of pimping, a felony, and is punishable by imprisonment in the state prison for three, four, or six years. or, where the person engaged in prostitution is under 16 years of age, is punishable by imprisonment in the state prison for three, six, or eight years.

§266i. P.C. Pandering

Any person who: (a) procures another person for the purpose of prostitution; or (b) by promises, threats, violence, or by any device or scheme, causes, induces, persuades or encourages another person to become a prostitute; or (c) procures for another person a place as inmate in a house of prostitution or as an inmate of any place in which prostitution is encouraged or allowed within this state; or (d) by promises, threats, violence or by any device or scheme, causes, induces, persuades or encourages an inmate of a house of prostitution, or any other place in which prostitution is encouraged or allowed, to remain therein as an inmate; or (e) by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procures another person for the purpose of prostitution, or to enter any place in which prostitution is encourage or allowed within this state, or to come into this state or leave this state for the purpose of prostitution; or (f) receives or gives, or agrees to receive or give, any money or thing of value for procuring, or attempting to procure, another person for the purpose of prostitution; or to come into this state or leave this state for the purpose of prostitution, is guilty of pandering, a felony, and is punishable by imprisonment in the state prison for three, four, or six years, or, where the other person is under 16 years of age, is punishable by imprisonment in the state prison for three, six, or eight years.

February 23, 1995

An act to add Chapter 9.5 (commencing with Section 11530) to Division 10 of the Health and Safety Code, and to add Chapter 2.5 (commencing with Section 653.20) to Title 15 of Part 2 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1035, as amended, Katz. Loitering: drug activities: prostitution.

Existing law prohibits loitering under specified circumstances, including loitering upon the private property of another without visible or lawful business with the owner or occupant thereof, or loitering in or about any public toilet for the purpose of engaging in or soliciting a lewd, lascivious, or unlawful act.

This bill would make it a misdemeanor to loiter in, or near, any public place in a manner and under circumstances manifesting the purpose of engaging and with the intent to engage in drug-related activity, or with the intent to commit prostitution. This bill would impose a state-mandated local program by creating new crimes.

AB 1035

— 2 —

This bill would state that these provisions shall not prevent local governing body from adopting and enforcing consistent laws, and, where local laws duplicate or supplement these provisions, the provisions shall be construed as providing alternative remedies and not to preempt the field.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 9.5 (commencing with Section
2 11530) is added to Division 10 of the Health and Safety
3 Code, to read:

4
5 CHAPTER 9.5. LOITERING FOR DRUG ACTIVITIES

6
7 11530. (a) Like many other communities across this
8 nation, communities in the State of California are
9 experiencing an increase in the street sales of marijuana,
10 PCP, rock cocaine, and other controlled substances as
11 defined in this code.

12 (b) It is the intent of the Legislature to assist law
13 enforcement personnel of this state in abating the sale of
14 controlled substances. The Legislature finds and
15 determines that the sale of controlled substances
16 constitutes a continuing public nuisance which adversely
17 affects the public health, safety, and welfare, fuels fear
18 among the community, and is a factor which not only
19 depreciates the value of property upon which the activity
20 occurs, but also depreciates the value of adjacent and
21 surrounding properties, and adversely affects our local
22 communities a local community's image, business,

1 contrivance, instrument, or apparatus designed or
2 marketed for the use of smoking, injecting, ingesting, or
3 consuming marijuana, hashish, PCP, or any controlled
4 substance, including, but not limited to, roach clips,
5 cigarette papers, and rollers designed or marketed for use
6 in smoking a controlled substance.

7 (10) Is physically identified by a peace officer as a
8 member of a gang or association that has, as one of its
9 purposes, illegal drug activity.

10 (11) Has been convicted in any court within this state,
11 within five years prior to the arrest under this chapter, of
12 any violation involving the use, possession, or sale of any
13 of the substances referred to in Chapter 6 (commencing
14 with Section 11350) or Chapter 6.5 (commencing with
15 Section 11400), or has been convicted of any violation of
16 those provisions or substantially similar laws of any
17 political subdivision of this state or of any other state.

18 (12) Is in an area that is known for unlawful drug use
19 and trafficking.

20 (13) Is on or in premises that have been reported to
21 law enforcement as a place suspected of unlawful drug
22 activity.

23 (14) Is currently subject to any order prohibiting his or
24 her presence in any high drug activity geographic area.

25 (15) Has engaged, within six months prior to the date
26 of arrest under this section, in any behavior described in
27 this subdivision, with the exception of paragraph (11), or
28 in any other behavior indicative of illegal drug-related
29 activity.

30 (c) The list of circumstances set forth in subdivision
31 (b) is not exclusive. Any other relevant circumstances
32 may be considered in determining whether a person has
33 the requisite intent. Moreover, no one circumstance or
34 combination of circumstances is in itself determinative of
35 intent. Intent must be determined based on an evaluation
36 of the particular circumstances of each case.

37 11536. If any section, subdivision, sentence, clause,
38 phrase, or portion of this chapter is for any reason held
39 invalid or unconstitutional by any court of competent
40 jurisdiction, that portion shall be deemed a separate,

1 distinct, and independent provision, and such that
2 holding shall not affect the validity of the remaining
3 portion thereof.

4 11538. A violation of any provision of this chapter is a
5 misdemeanor.

6 11540. Nothing in this chapter shall prevent a local
7 governing body from adopting and enforcing laws
8 consistent with this chapter. Where local laws duplicate
9 or supplement this chapter, this chapter shall be
10 construed as providing alternative remedies and not to
11 preempt the field.

12 SEC. 2. Chapter 2.5 (commencing with Section
13 653.20) is added to Title 15 of Part 2 of the Penal Code, to
14 read:

15
16 CHAPTER 2.5. LOITERING FOR THE PURPOSE OF
17 ENGAGING IN A PROSTITUTION OFFENSE
18

19 653.20. (a) This chapter is enacted for the purpose of
20 assisting local law enforcement in controlling
21 prostitution-related activities and to minimize the
22 adverse effect these activities have upon local
23 communities.

24 (b) The Legislature finds and determines that
25 loitering for the purposes of engaging in a prostitution
26 offense constitutes a public nuisance which, if left
27 unabated, adversely affects a community's image, public
28 safety, and residential and business development, and
29 tends to encourage further criminal activity.
30 Furthermore, prostitution-related activities consume an
31 inordinate amount of limited law enforcement resources.

32 653.22. For purposes of this chapter, the following
33 definitions apply:

34 (a) "Commit prostitution" means to engage in sexual
35 conduct for money or other consideration, but does not
36 include sexual conduct engaged in as a part of any stage
37 performance, play, or other entertainment open to the
38 public.

39 (b) "Known prostitute or procurer" means a person
40 who within five years previous to the date of arrest for

1 violation of this section has, within the knowledge of the
2 arresting officer, been convicted in any court of this state
3 for any offense relating to or involving prostitution as
4 defined in this code.

5 ~~(e)~~

6 (b) "Public place" means an area open to the public,
7 or an alley, plaza, park, driveway, or parking lot, or an
8 automobile, whether moving or not, or a building open to
9 the general public, including one which serves food or
10 drink, or provides entertainment, or the doorways and
11 entrances to a building or dwelling, or the grounds
12 enclosing a building or dwelling.

13 ~~(d)~~

14 (c) "Loiter" means to delay or linger without a lawful
15 purpose for being on the property and for the purpose of
16 committing a crime as opportunity may be discovered.

17 653.24. (a) It is unlawful for any person to loiter in,
18 on, or near any public place with the intent to commit
19 prostitution. This intent is evidenced by acting in a
20 manner and under circumstances which openly
21 demonstrate the purpose of inducing, enticing, or
22 soliciting prostitution, or procuring another to commit
23 prostitution.

24 ~~(b)~~ Among the circumstances which may be
25 considered in determining whether a person intends this
26 prohibited conduct are that she or he does any of the
27 following:

28 ~~(1)~~ Repeatedly beckons to, stops, or attempts to stop
29 or engage passers/by in conversation.

30 ~~(2)~~ Repeatedly stops or attempts to stop motor vehicle
31 operators by hailing, waving of arms, or any other bodily
32 gestures.

33 ~~(3)~~ Has previously been convicted of violating this
34 section.

35 ~~(4)~~ Circles an area in a motor vehicle and repeatedly
36 beckons to, contacts, or attempts to contact or stop
37 pedestrians.

38 ~~(5)~~ Is a known prostitute or procurer.

1 ~~(b)~~ Among the circumstances that may be considered
2 in determining whether a person loiters with the intent
3 to commit prostitution are that the person:

4 ~~(1)~~ Repeatedly beckons to, stops, engages in
5 conversations with, or attempts to stop or engage in
6 conversations with passersby.

7 ~~(2)~~ Repeatedly stops or attempts to stop motor
8 vehicles by hailing the drivers, waving arms, or making
9 any other bodily gestures, or engages or attempts to
10 engage the drivers or passengers of the motor vehicles in
11 conversation.

12 ~~(3)~~ Has been convicted of violating this section,
13 subdivision (a) or (b) of Section 647, or any other offense
14 relating to or involving prostitution, within five years of
15 the arrest under this section.

16 ~~(4)~~ Circles an area in a motor vehicle and repeatedly
17 beckons to, contacts, or attempts to contact or stop
18 pedestrians or other motorists.

19 ~~(5)~~ Loiters in an area that is known for prostitution
20 activity.

21 ~~(6)~~ Has engaged, within six months prior to the arrest
22 under this section, in any behavior described in this
23 subdivision, with the exception of paragraph (3), or in
24 any other behavior indicative of prostitution activity.

25 (c) The list of circumstances set forth in subdivision
26 (b) is not exclusive. Any other relevant circumstances
27 may be considered in determining whether a person has
28 the requisite intent. Moreover, no one circumstance or
29 combination of circumstances is in itself determinative of
30 intent. Intent must be determined based on an evaluation
31 of the particular circumstances of each case.

32 653.26. If any section, subdivision, sentence, clause,
33 phrase, or portion of this chapter is for any reason held
34 invalid or unconstitutional by any court of competent
35 jurisdiction, that portion shall be deemed a separate
36 distinct, and independent provision, and that holding
37 shall not affect the validity of the remaining portion of the
38 chapter.

39 653.28. A violation of any provision of this chapter is
40 a misdemeanor.

1 653.30. *Nothing in this chapter or Chapter 2*
2 *(commencing with Section 639) shall prevent a local*
3 *governing body from adopting and enforcing laws*
4 *consistent with these chapters relating to prostitution or*
5 *prostitution-related activity. Where local laws duplicate*
6 *or supplement this chapter or Chapter 2 (commencing*
7 *with Section 639), these chapters shall be construed as*
8 *providing alternative remedies and not to preempt the*
9 *field.*

10 SEC. 3. No reimbursement is required by this act
11 pursuant to Section 6 of Article XIII B of the California
12 Constitution because the only costs that may be incurred
13 by a local agency or school district will be incurred
14 because this act creates a new crime or infraction,
15 eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section
17 17556 of the Government Code, or changes the definition
18 of a crime within the meaning of Section 6 of Article
19 XIII B of the California Constitution.

20 Notwithstanding Section 17580 of the Government
21 Code, unless otherwise specified, the provisions of this act
22 shall become operative on the same date that the act
23 takes effect pursuant to the California Constitution.

is excludable.

"(ii) EXCEPTION.—Clause (i)(I) shall not apply to an alien who committed only one crime if—

"(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

"(II) the maximum penalty possible for the crime of which the alien was convicted (or of which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

"(B) MULTIPLE CRIMINAL CONVICTIONS.—Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement actually imposed were 5 years or more is excludable.

"(C) CONTROLLED SUBSTANCE TRAFFICKERS.—Any alien who the consular or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is excludable.

"(D) PROSTITUTION AND COMMERCIALIZED VICE.—Any alien who—

"(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, entry, or adjustment of status,

"(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, entry, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

"(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,

is excludable.

"(E) CERTAIN ALIENS INVOLVED IN SERIOUS CRIMINAL ACTIVITY WHO HAVE ASSERTED IMMUNITY FROM PROSECUTION.—Any alien—

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**San Francisco Task Force Prostitution
Final Report**

Appendix C.

Responses by City Officials to Requests for Information

1. Letter from San Francisco City Attorney's Office, March 27, 1994.
2. Letter from Anthony Ribera, Chief of Police, May 16, 1994.
3. Letter from Arlene M. Sauser, Chief Adult Probation Officer, November 10, 1994.
4. Letter from Sandra R. Hernandez, Director of Health, November 15, 1994.
5. Letter from Anthony Ribera, Chief of Police, November 17, 1994.
6. Letter from William S. Leong, San Francisco Pretrial Diversion Project, November 18, 1994.
7. Letter from the Honorable Diane Elan Wick, Municipal Court, November 28, 1994.
8. Letter from Kevin Foster, Board of Parole Commissioners, January 19, 1995.
9. Letter from Jeff Brown, Office of the Public Defender, February 1, 1995.



Louise H. Renne,
City Attorney

AMY S. ACKERMAN
Deputy City Attorney
Tel: (415) 554-4285

March 27, 1994

Honorable Terrence Hallinan
Board of Supervisors
San Francisco Veterans Building
401 Van Ness Avenue
San Francisco, CA 94102

Re: POLICE CODE SECTIONS 215 THROUGH 248

Dear Supervisor Hallinan:

QUESTION PRESENTED:

You have asked whether Police Code sections 215 through 248 are preempted by California state law or unconstitutional?

ANSWER:

Yes, Police Code sections 215 through 248 are preempted by California Laws on prostitution.

ANALYSIS:

"It is settled that a local municipal ordinance is invalid if it attempts to impose additional requirements in a field that is preempted by general law. Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." (Lancaster v. Municipal Court (1972) 6 Cal.3d 805, 807-808, citations omitted.)

The California Legislature has passed many laws prohibiting various aspects of sexual conduct. The most pertinent laws are: Penal Code section 647, which prohibits "disorderly conduct," including solicitation, prostitution, and loitering with the intent of engaging in an unlawful act; Penal Code section 315, which prohibits keeping or residing in a "house of ill-fame"; Penal Code section 316 which prohibits an individual from keeping a "disorderly house"; and Penal Code section 318, which prohibits prevailing upon any person to visit any place for the purpose of prostitution. (Copies of these statutes are attached for your convenience.)

The interface between local police power and state statutes has resulted in a very complex body of municipal law. Courts are reluctant to find that the state legislature has preempted local police power in the absence of manifest legislative intent. Such implied preemption issues are decided on a case by case basis. Therefore, precedents in one area are seldom persuasive in another.

One area where the California Supreme Court has determined that the California Legislature has assumed exclusive legislative control is the field of criminal sexual activity: "The constant attention the Legislature has given to the criminal aspects of sexual activity establishes that, in the absence of an express statutory provision to the contrary, this area of the law is intended to be wholly within the control of the Legislature and not subject to local regulation." (Lancaster v. Municipal Court, supra, 6 Cal.3d at p. 808; see also In re Lane (1962) 58 Cal.2d 99, 112 ["There can be no question that the Legislature has occupied the field with respect to the crime of prostitution."].)

Recently, the California Attorney General's Office concluded that a city ordinance which establishes a misdemeanor offense for loitering for the purpose of engaging in prostitution would be preempted by state law. (Cal. Atty Gen. Op. 94-407; 95 C.D.O.S. 917.) The Attorney General concluded that the Legislature has fully occupied the field of criminal sexual activity.

Police Code sections 215 through 248 are all municipal ordinances prohibiting prostitution or behavior promoting prostitution. Because the courts have consistently held that the California Legislature has preempted the field of criminal sexual activity, we conclude that these ordinances are preempted by the state laws prohibiting prostitution.

We hope that you have found this information to be helpful. Please contact us if we can provide you with any further assistance.

Very truly yours,

LOUISE H. RENNE
City Attorney

BURK E. DELVENTHAL
Deputy City Attorney


AMY S. ACKERMAN
Deputy City Attorney



POLICE DEPARTMENT
CITY AND COUNTY OF SAN FRANCISCO

HALL OF JUSTICE
850 BRYANT STREET
SAN FRANCISCO, CALIFORNIA 94103

COPY

ANTHONY D. RIBERA
CHIEF OF POLICE

May 16, 1994

Commissioner Wayne Friday
San Francisco Police Department
850 Bryant Street Rm 505
San Francisco, CA 94103

Subject: Massage Industry Permits

Dear Commissioner Friday:

I am in receipt of a memo from Jean Harris, Assistant to the Director of Public Health inquiring into the Police Department's role in permitting massage related activities. At the present time there are one hundred and two massage establishments operating in San Francisco. These include massage establishments that only offer massage as well as businesses such as hotels, spas, and beauty salons that offer massage as an accessory service. Additionally, there are one hundred and twenty permitted "outcall massage service" businesses. These businesses operate by means of a client calling to request massage service to be provided at their hotel or residence. The Police Department presently permits over one thousand one hundred masseuses and masseurs to work in these businesses. The revenue collected by means of an annual tax collected from the aforementioned permit holders amounts to approximately \$127,548.00 per year.

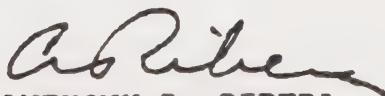
Applications for massage establishments received by the Police Department are referred to the Department of Public Health for recommendation. The Department of Public Health conducts on site inspections of all proposed establishments to assure proper sanitary conditions exist and that the criteria for permit issuance established in the Health Code is met. It is during that time the inspections are conducted that I feel the Department of Public Health can provide information on safe health practices and services to owners and employees of the massage establishments.

Letter to Commissioner Friday
Page 2

The Police Department conducts thorough background investigations of all persons seeking a permit related to massage. The high propensity for vice related activities i.e.; prostitution, pimping/pandering requires the Department to monitor the activities of suspect masseuses/masseurs and massage establishment operators. While violations of law detected by the Police Department may be criminally prosecuted, the advantage of being the permitting authority grants the Department the ability to administratively review and discipline offenders. In reality, few reported criminal acts associated with the massage industry are prosecuted. However, administrative disciplinary actions have been effective by means of revoking the permits of those persons found violating the law and as such provides a deterrent to committing illegal acts.

I welcome the assistance of the Department of Public Health in the area of providing health awareness information and education to those persons engaged in massage related activities. However, I strongly feel that the regulation of the massage industry should remain a responsibility of the Police Department.

Sincerely,



ANTHONY D. RIBERA
Chief of Police

City and County of San Francisco

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

cc Supv Hallinan
Adult Probation Department
Hall of Justice



ARLENE M. SAUSER
Chief Adult Probation Officer

BY

[Signature]

November 8, 1994

John L. Taylor
Clerk of the Board
Board of Supervisors
City Hall
San Francisco, CA 94102

Reference: File 207-94-8.2

Dear Mr. Taylor:

In response to Supervisor Hallinan's request for information regarding Adult Probation's annual costs in enforcing anti-prostitution laws, the costs are negligible. We only have 7 prostitution cases under supervision. Total Department supervision workload is approximately 11,000 cases. These 7 cases were summarily granted, meaning they were placed on probation without the Department doing a presentence report. Therefore, we incurred no costs in providing a presentence report and investigation to the court before sentencing.

If there are follow-up questions, please feel free to contact either me at 553-1688 or Mark James, Community Services Division Director at 553-1917.

Thank you.

Sincerely,

[Signature of Arlene M. Sauser]

Arlene M. Sauser
Chief Adult Probation Officer

AMS:hbm

h:\taylor.doc

TEL:

Jan 20 95

2:10 No.004 P.02

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City and County of San Francisco

BOARD OF SUPERVISORS



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BY: al

November 15, 1994

Department of Public Health

Sandra R. Hernández, M.D.
Director of Health

*cc Supr. Hallways
Health, Pub. Inf
Know Com*

John Taylor
Clerk of the Board
Board of Supervisors
Room 235, City Hall
San Francisco, CA 94102

File No. 207-94-8.2

Dear Mr. Taylor:

This will respond to your recent request for information on the annual costs the department incurs to enforce anti-prostitution laws and the prosecution and defence of prostitution-related crimes.

The department performs HIV testing of defendants arrested for specified sex crimes pursuant to Penal Code Section 1202.6 as ordered by the court. Although P.C. Section 1202.6 requires only a HIV testing component, the department believes that confidential counseling is an integral part of the total procedure and consequently, has provided both components through its Forensic AIDS Project.

Annual core program costs are:

Personnel:	1-Health Worker III	\$46,500
Other:	Mileage	\$ 1,080
	Laboratory	<u>\$23,210</u>
TOTAL		\$70,790

Through the retroactive billing process of SB 90 the department is seeking reimbursement for its expenses.

Do not hesitate to contact Larry Meredith (554-2610) should you have further questions.

Sincerely,

Sandra Hernández, M.D.
Director of Health



POLICE DEPARTMENT
CITY AND COUNTY OF SAN FRANCISCO

THOMAS J. CAHILL HALL OF JUSTICE
850 BRYANT STREET
SAN FRANCISCO, CALIFORNIA 94103

ANTHONY D. RIBERA, Ph.D.
CHIEF OF POLICE

November 17, 1994

John L. Taylor
Clerk of the Board
Board of Supervisors
City Hall, Room 235
San Francisco CA 94102

File 207-94-8.2

Dear Mr. Taylor:

As requested in your letter of October 31, 1994, I am submitting the annual costs incurred by the San Francisco Police Department in enforcing anti-prostitution laws. I regret I am unable to provide the costs of prosecuting and defending prostitution cases. Those functions are performed by the District Attorney and Public Defender, respectively.

In the police department, the Vice Crimes Division is the primary unit in the enforcement of anti-prostitution laws. The commanding officer, Lieutenant Dutto, targets those areas identified by complaints from neighborhood groups, business groups, and organizations such as "Save Our Streets."

It is difficult to estimate how much time is spent making an individual prostitution arrest or in conducting an extended investigation.

You must be aware that the Vice Division, as well as enforcing Section 647b of the Penal Code, Soliciting for Prostitution, also investigates all felonies committed by prostitutes (except homicides), organized bookmaking, gambling on mechanical amusement devices, and organized sports betting pools.

The Patrol Force, in addition to their primary patrol duties, also enforce prostitution laws, but to a much lesser degree than the Vice Division.

The figures on the attached sheet show the annual salaries of the personnel in Vice Crimes for fiscal year 94-95 and the number of arrests made by Vice and Patrol for 1994.

Sincerely,

ANTHONY D. RIBERA
Chief of Police

cc: Health, Public Safety and Environment Committee

Annual Cost / Vice Crimes Division / 94-95

Salaries:

Lieutenant	1	\$ 67,469.00
Sergeant/Inspectors	5	\$295,320.00
Police Officers	6	\$305,154.00
Overtime		\$116,699.00
Clerk	1	\$ 30,810.00

Vehicles:

Annual Operating Cost	4	\$ 8,000.00
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TOTAL COST:		\$823,452.00
-------------	--	--------------

Prostitution Related Arrests, 1994 - 5,269

SAN FRANCISCO PRETRIAL DIVERSION PROJECT, INC.

567 - 7th Street
San Francisco, California 94103
(415) 626-4995

WILLIAM S. LEONG
Executive Director

November 18, 1994

Honorable Michael Hennessey
Sheriff
City and County of San Francisco
City Hall, Room 333
San Francisco, California 94102

RE: Prostitution Costs - Pretrial Diversion

Dear Sheriff Hennessey,

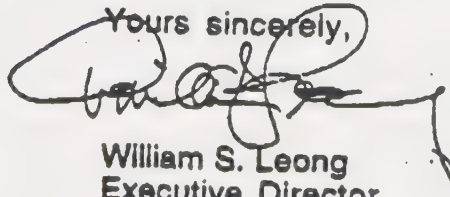
I am writing in response to your inquiry regarding the costs of Pretrial's work related to the enforcement of anti-prostitution laws and the prosecution and defense of prostitution-related crimes.

During Fiscal Year 1993/1994, two-hundred eighty(280) "647B PC" cases were granted pretrial diversion which comprises 19.4% of all cases. The total contract for pretrial diversion during FY 1993/1994 was \$136,739. The "raw" figure therefore, expended for these cases last fiscal year was \$26,577 (19.4% X \$136,739).

Please feel free to call me if you have any further questions.

Thank you.

Yours sincerely,



William S. Leong
Executive Director

WSL:qu

cc: Supervisor Terence Hallinan



From the Office of
The Presiding Judge

Nea *Pub* *Saf* *Sup* *Supervisor*
The Municipal Court
San Francisco, California

November 28, 1994

Mr. John L. Taylor
Clerk of the
Board of Supervisors
City and County of San Francisco
City Hall
San Francisco, CA 94102

RECEIVED
BOARD OF SUPERVISORS
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24
BC
FILE 207-94-8.2

Dear Mr. Taylor:

Thank you for your letter dated October 31, 1994 requesting the annual costs our court expends to enforce anti-prostitution laws and the prosecution and defense of prostitution-related crimes.

Our administrative staff has done some initial research and can provide you with the following information:

Between January 1, 1993 and March 31, 1993, there were 634 misdemeanor cases filed in the Municipal Court involving charges of Penal Code section 372 (maintaining a public nuisance) and Penal Code section 647(b) (prostitution). These are the two most common charges filed to enforce anti-prostitution laws.

Of those 634 cases, the defendant in 167 cases is on bench warrant status and there is no way of determining the cost in these cases until there is a final disposition; in 172 cases, the matter is still pending with a future court date; and, in 164 cases the matter was either dismissed by the district attorney or there was a disposition on other charge(s).

According to our Bail Commissioner, this three-month period is the heaviest with regard to jail population. Our estimate, therefore, is that our court handles approximately 2,400 cases involving these two charges each year.

The processing of each case varies depending on the number of bench warrants issued for the defendant's failure to appear in court, whether the defendant is represented by the public defender or private counsel, whether the case proceeds to jury trial, and whether the defendant expeditiously complies with the Penal Code section 1202.6 testing and counseling requirements.

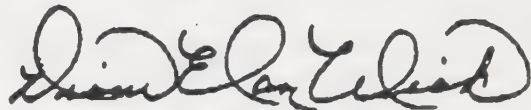
Mr. John L. Taylor
November 28, 1994
Page two

Each case varies to such a degree that we cannot extrapolate to provide an estimate of the annual costs incurred by the court in each case. We believe that developing such information will require a review of each file by senior staff.

In light of this court's move to temporary facilities in mid-January, such a review would place an extreme burden on our current resources and we are reluctant to do so without more direction from the Board of Supervisors.

If you would like additional information, please advise so that we can prepare an estimate of the time and cost involved in providing more detailed information.

Sincerely,

A handwritten signature in dark ink, appearing to read "Diane Elan Wick", written in a cursive style.

Diane Elan Wick
Presiding Judge

DEW:em

TEL:

Jan 20 95

2:15 No.005 P.07

TEL NO:

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BOARD OF PAROLE COMMISSIONERS

MICHAEL HENNESSEY
SHERIFF

ARLENE SAUSER
CHIEF ADULT PROBATION OFFICER

MARY MORAN PAJALICH
PUBLIC MEMBER

KEVIN J. FOSTER
EXECUTIVE DIRECTOR

555 Bayview Street
San Francisco, CA 94103
Telephone (415) 883-1591

January 19, 1995
Ref: 95-014

TO: Supervisor Terrance Hallinan
Fax: 554-7765

FROM: Kevin Foster, Director *K. Foster*
County Parole

RE: Cost to Process Prostitution Offenders

In response to your inquiry to Sheriff Hennessey regarding the cost of processing prostitution offenders by County Parole, please be informed that during calendar year 1994 we incurred no costs. During 1994 the County Parole Board considered 242 applicants for parole. Not one of these applicants was incarcerated on a charge of 647b PC.

If you require any additional information or clarification, please contact me at 553-1591.

cc: Sheriff Hennessey

bcox/59

OFFICE OF THE PUBLIC DEFENDER

CITY AND COUNTY OF SAN FRANCISCO

555 SEVENTH STREET
SAN FRANCISCO, CALIFORNIA 94103
(415) 553-1671

JEFF BROWN
Public Defender

PETER G. KEANE
Chief Attorney

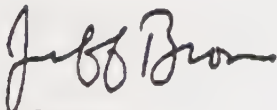
February 1, 1995

John L. Taylor
Clerk, Board of Supervisors
Room 235, City Hall
San Francisco, CA 94102

Dear Ms. Taylor:

In response to your letter of January 26, 1995 about the costs of defending prostitution cases, I am advising you that the range of cost is between \$400,000 per year and \$500,000 for public defender and appointed counsel.

Yours very truly,



Jeff Brown
Public Defender

JB:cps

cc: Hon. Terence Hallinan

COMMUNITY BOARDS OF SAN FRANCISCO

1540 Market Street, Room 490 · San Francisco, CA 94102 · (415) 863-6100 · Fax (415) 626-0595

November 10, 1995

SF Prostitution Task Force
Office of Supervisor Terence Hallinan
401 Van Ness Avenue Room 308
San Francisco, CA 94102

Dear Supervisor Hallinan,

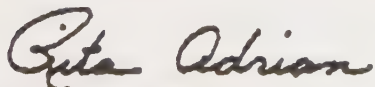
Thank you for the opportunity to participate with the San Francisco Prostitution Task Force last year. My observations of group discussions and personal interactions between neighborhood/business associations representatives and prostitutes' representatives were both enlightening and demonstrative of the dynamics of conflict.

What twenty years of neighborhood-based conflict resolution and violence prevention work has taught Community Boards is that all conflict -- on a spectrum ranging from intimate, interpersonal disputes to divided communities -- has the same origins: different perspectives, incomplete or incorrect perceptions, false assumptions, miscommunication or lack thereof, and -- most importantly -- the inability and/or resistance to seeing "the big picture."

Given our understanding of and experience in dealing with every kind of conflict, I hope our conciliation process and volunteer conciliators (from every neighborhood in the city) can prove to be a valuable resource in addressing the tensions arising from neighborhood, street, and prostitution issues in a way that effects positive change and/or complete resolution.

Thank you very much for seeing Community Boards as a possible resource.

For Neighborhood Peacemaking,



Rita Adrian
Director of Neighborhood Programs

Laws and Enforcement

A. Current Law and Policy: Reports

1. Condoms as Evidence in Prostitution Related Cases-Letter from Senator Milton Marks to District Attorney Arlo Smith, requesting that Smith cease the use of condoms as evidence (March 9, 1994); SF NOW revising current policy (March 31, 1994); Special Resolution passed by the San Francisco Task Force on Prostitution (May 10, 1994); "Condoms As Evidence of Prostitution, " Legislation passed by the Board of Supervisors urging the District Attorney and the Police Commission to cease confiscating condoms and using them as court evidence in prostitution related offenses; Letter From District Attorney Arlo Smith to Director of Public Health, Dr. Sandra Hernandez agreeing to cease the use of condoms as evidence (September 6, 1994).
2. Legal Elements of Penal Code Section 647 (B); Penalties; Mandatory HIV Testing requirements.
3. The "New" Prostitution: New Cases Nationwide; criminal charges under general criminal law; HIV specific offenses; Increases in Grading and Sentencing; Quarantining; Testing cases; Civil penalties.
5. Municipal Codes- Reports regarding unconstitutionality and preemption of prostitution related municipal codes 215, 225 and 240; MIR report submitted by Gordon Park-Li containing statistical data on disposition and dismissal rate of municipal codes. (April 25, 1994 and July 6, 1994)
6. Massage Licenses- Report re: applications for and revocation of permits; massage parlor regulations, state laws effecting eligibility for licenses, individual and massage business licensing, municipal codes regulating massage businesses; Letter from Police Chief Ribera regarding police jurisdiction of massage parlor licensing.
7. Repeal of Mandatory Minimum Jail Sentences in Solicitation Cases, resolution to sponsor legislation to amend PC 647 adopted by the California Bar Association (1994).
8. Condoms: Not admissible to Prove Prostitution-Related Crimes- resolution to sponsor legislation to amend the evidence code adopted by the California Bar Association (1994).

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9. ACLU In Opposition to AB1035. Letter to the Assembly Appropriations Committee in opposition to a bill (now law) making it illegal to loiter with the intent to commit prostitution or drug offenses.

B. Arrest and Incarceration Statistics

10. San Francisco Police Department Arrest Reports, January to December 1994. On file with the Police Department. Adults and Juveniles Arrested by Race and Sex; Prostitution-Related Arrests in comparison with other Part II crimes. 1994.

11. Special Investigations Bureau, Vice Crimes Division, Monthly Report, December 1994.

12. Arrests From January - September 1991 and 1992, comparing Prostitution and other Part II crimes.

14. Arrest Statistics for the years 1991, 1992 and 1993; Division of Labor in Vice Crimes Unit; Training of police officers to deal with prostitution.

15. "Number of African American Inmate in SF JAIL Passes 1,000 Mark," Sheriff's Department Report and Statistics, July 1993.

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16. Yvonne Dotson Vs. Yee , September 1995 prepared by Fania Davis, attorney for Yvonne Dotson, in accordance with settlement against San Francisco in which Federal Court Judge Marilyn Patel of the Ninth Circuit Court directed Dotson to submit recommendations for the Police Department that address police misconduct.

17. Police Response to Reports of Violence Against Prostitutes, a report from Maggie's Toronto Prostitutes' Community Service Project, September 25, 1992.

18. Report Presented to San Francisco Board of Supervisor's Hearing on Police Accountability, April 11, 1995

D. Decriminalization and Regulation (Also see: IX. Minority Opinions)

19. Resolution for Decriminalization of Prostitution Regarding Immigrant Issues, submitted by Asian AIDS Project.

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20. Background Paper: The Regulation of Prostitution City of Toronto, Public Health Department April 24, 1995.

21. "Australian Capital Territory Prostitution Act 1992" to regulate certain aspects of prostitution and "Brindal Bill" to decriminalise prostitution.

22. Registration, Mandatory Testing, and Health Certificates: The Record by Priscilla Alexander.

Health, Safety and Services

1. "Needs Assessment For At Risk Populations," Report Prepared for Community Outreach Project For Female Identified Sex Industry Workers," November 1995.

Attachments

A. Sexual Health/HIV and STD's

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5. "Agencies Targeting Outreach and Services To Sex Workers" *Community Outreach Project*, 1995.
6. "Resources For Substance Abusers (Adults and Youth)" *Perinatal Services-Department of Public Health*, 1993.

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1. Transcript from Hearing, City Hall November 29, 1994
2. Written Testimony, submitted November 28, 1994
3. Written Testimony, submitted December 1995
4. Position Paper regarding the issues relating to young people working in the sex trades- Nelly Velasco
5. Financial Impact of Prostitution in San Francisco- Vic St. Blaise
6. Issues For Male Sex Workers- Vic St. Blaise
7. The Crookedest Game of All: Stud Poke her- Margo St. James
8. Between The Rapists and The Police-Carol Leigh

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